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TENTATIVE AGENDA AND MINIBOOK  
**STATE WATER CONTROL BOARD MEETING**  
 FRIDAY, APRIL 1, 2016

HOUSE ROOM C, GENERAL ASSEMBLY BUILDING  
 9TH & BROAD STREETS  
 RICHMOND, VIRGINIA 23219

**CONVENE - 10:00 A.M.**

			<b>TAB</b>
<b>I.</b>	Minutes (January 14, 2016)		A
<b>II.</b>	<b>Permits</b>		
	Synagro Central, LLC Virginia Pollution Abatement Permit	Stuart	B
<b>III.</b>	<b>Regulations - Final</b>		
	Virginia Water Protection Permit Program Regulations	Davenport/	C
	Virginia Water Protection Permit Regulation (9VA25-210)	Davis/Winn/	D
	Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660)	Kudlas	E
	Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission Or the State Corporation Commission and Other Utility Line Activities (9VAC25-670)		F
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	Virginia Water Protection General Permit for Impacts from Development Activities (9VAC25-690)		H
<b>IV.</b>	<b>Significant Noncompliers Report</b>	O'Connell	I
<b>V.</b>	<b>Public Forum</b>		
<b>IX.</b>	<b>Other Business</b>		
	Living Shorelines Loan Program Guidelines	Gills	J
	Future Meetings (June 27-28, September 23-23, December 12-13)		

**ADJOURN**

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For Regulatory Actions (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during

the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For Case Decisions (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

Regulatory Actions: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

Case Decisions: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

New information will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM**: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**VPA Permit No. VPA00071 – Synagro Central, LLC. – Louisa County:** Synagro Central, LLC. submitted a Virginia Pollution Abatement (VPA) permit application for the land application of biosolids. The draft permit, if issued as drafted, would authorize Synagro to land apply biosolids to 90 sites, totaling approximately 16,790 acres in Louisa County. Of the 90 sites proposed, 76 are currently permitted under an administratively continued Virginia Department of Health (VDH) Biosolids Use Regulation (BUR) permit and are currently eligible for land application by Synagro. Notice for this proposed permit issuance was published in *The Central Virginian* on October 22, and October 29, 2015. The 30-day public notice comment period ended on November 23, 2015. NRO received 52 comments, 38 of which requested a public hearing. A public hearing was authorized on December 14, 2015.

The public hearing was held at 7:00 p.m. on February 23, 2016, at the Louisa County High School in Mineral, Virginia. Mr. Robert Dunn served as hearing officer. An interactive informational session preceded the hearing. The public hearing comment period closed on March 8, 2016. Below is a summary of the comments that have been received thus far:

- 30 individuals provided oral comments during the public hearing
  - o 19 individuals who provided comments spoke in favor of permit issuance
- One written comment was received prior to the hearing
- Three written comments were received after the hearing

Staff combined and summarized comments, where possible, without losing specifics. The responses were prepared with regulatory, technical, and historical perspectives. Summary of Public Comments and Staff's Responses:

#### 1. Protection of Surface Waters and Lake Anna

*(Janet Adere, Don Burrridge, Norman Collins, James & Constance Baker, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, Edward Hanley, William & Lidia Dawson, Brian Ullmann & Cindy Dickerson, Reid Smith, Victoria & Mark Collins, Joyce Cool, Olivia Ryan, Robert Fogg, Betty Jinnett, Joshua Arndt, Robert & Robin Barone, Renee & Stan Swigonski, H.C. Parrish, William Montminy, Craig Anderson, Agnes Dunn, Alan Dunn, Shaheen Alikhan, Elke Alikhan, Kathie Walker, Ruth Ann Small, Marla Small, Bryan Small, Shannon Small, Tammy Adams, Brian Anders, C.W. Williams, Tyla Matteson, David Walker)*

Comments were received related to concerns regarding adverse impacts to surface water quality:

- Potential for contamination from runoff into surface waters;
- Adverse effects on fish and other aquatic life in Lake Anna as a result of run-off; and
- Potential for contamination of Lake Anna and the Chesapeake Bay Watershed as a result of runoff.

*Staff Response:* The conditions in the draft permit were written in accordance with Virginia Pollution Abatement (VPA) regulation (9VAC25-32-30.A.) to prohibit point source discharges of pollutants to surface waters, including wetlands, except in the case of a storm event greater than the 25-year, 24-hour storm. The regulation (9VAC25-32-560) requires the implementation of agricultural best management practices (BMPs) to reduce nonpoint source pollution from farmland. This includes restrictions on application timing, application rate, slope, and in particular setback distances from sensitive environmental features; they are designed to control and restrict the movement of biosolids after application. Where impaired waters exist, the implementation of agricultural BMPs is the best method to reduce nonpoint source pollution from farmland in the subject watersheds. In most cases, these BMPs are implemented on a voluntary basis; however, agricultural land that receives biosolids is subject to regulatory requirements mandating key BMPs such as those mentioned above. Thus, a farmer's choice to fertilize with biosolids increases the number of BMPs implemented as well as the regulatory scrutiny of the agricultural practices implemented on his or her farm.

#### 2. Protection of Groundwater

*(Janet Adere, Don Burrridge, Norman Collins, James & Constance Baker, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, William & Lidia Dawson, Victoria & Mark Collins, Joyce Cool, Joshua Arndt, Robert & Robin Barone, H.C. Parrish, William Montminy, Craig Anderson, Agnes Dunn, Alan Dunn, Shaheen Alikhan, Elke Alikhan, Kathie Walker, Michael Jinnett, Betty Jinnett, Nancy Lotts, Jeff Vaughan, Jacob Vaughan, Shannon Small, Tammy Adams, Brian Anders, Ruth Ann Small, C.W. Williams, David Walker)*

Comments were received related to groundwater:

- Excess nutrients and contaminants migrating into ground water and drinking water wells.

*Staff Response:* The conditions in the draft permit are based on requirements in the VPA regulations which were developed to ensure that neither infiltration nor runoff have an effect on groundwater. Planting and harvesting requirements are designed such that the plant root systems uptake nutrients. Runoff and infiltration are addressed through the assessment of field conditions, such as crop type, distance to groundwater, soil type, and topography. Additionally, the permit conditions include limitations on land application to sites with >15% slope and sites characterized by the US Department of Agriculture Soil Survey as “Frequently Flooded”. The VPA regulation also requires that a Nutrient Management Plan (NMP) be written by a Virginia Department of Conservation and Recreation (DCR) certified NMP writer, and that land application be conducted in accordance with the NMP. The NMP dictates rate and timing of application. NMPs are written to ensure that biosolids are land applied at a rate which is agronomically appropriate, and to prevent application of excess nutrients. The VPA regulation requires a 100’ setback distance from all wells located near land application sites. Virginia Department of Health (VDH) regulation, (12VAC5-630-380,) require a minimum 100’ distance between new well construction and a “Sewage Disposal System or other contaminant source” including drain-fields, underground storage tanks, barnyards and hog lots. The VPA permit requirement for a 100’ setback from biosolids land application is a conservative application of this established standard, as agricultural fertilization of crops is not included in the VDH regulations as a contaminant source in this context and is not an activity that would require a mandatory setback for newly constructed wells. For wells that do not meet the VDH safe construction standards, the impact risk to a well is greater from more frequent and common activities surrounding the well than from land application activities undertaken observing appropriate regulatory setbacks, BMPs and other required protections. Assistance for private well owners is available from the Virginia Household Water Quality Program administered by Virginia Cooperative Extension (<http://www.wellwater.bse.vt.edu/vahwqp.php>).

### 3. Biosolids Composition and Protection of Human Health and the Environment

*(Janet Adere, Don Burrige, Norman Collins, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Edward Hanley, Brian Ullmann & Cindy Dickerson, Reid Smith, Victoria & Mark Collins, Joyce Cool, Olivia Ryan, Robert Fogg, Joshua Arndt, Robert & Robin Barone, Renee & Stan Swigonski, Teresa Newman, H.C. Parrish, Joanne Boenig, William Montminy, Stanley & JoAnn Nordlund, Matthew Olwell, Shaheen Alikhan, Elke Alikhan, Kathie Walker, Michael Jinnett, Betty Jinnett, Nancy Lotts, Jeff Vaughan, Jacob Vaughan, Kathie Walker, C.W. Williams, Lidia Epp, Fred Gruber, Kama Allen, Tyla Matteson, Kristie Weygant, David Walker)*

Comments were received expressing concerns over the composition of biosolids as it relates to human health and the environment:

- Potential unknown risks from unknown pathogens, metals and other contaminants;
- Lack of significant research to assess risks to human health and the environment;
- Long term effects unknown;
- Effectiveness of the treatment process;
- Application should only be allowed of Class A material as it is more treated;
- Monitoring and research requirements for pre and post land application;
- Only regulate 9 heavy metals falls short of “matrix of toxic pollutants”
- Not regulating/ testing other toxins regulated under The Clean Water and The Clean Air Acts;
- Large food companies not accepting products from land that has used biosolids;
- Excess nutrient and contaminants entering the food chain
- Potential for contaminants to become airborne;
- Pollution sensitive sites and/or individuals having not been accounted for in studies;
- Citizens of Louisa have suffered from medical issues; and
- Adjacent property owners are “subjected to forced exposure” to pollutants.

*Staff Response:* The Virginia State Water Control Law requires permits for the application of biosolids. The permit conditions contain all of the criteria required by the federal regulation plus additional requirements such as setbacks from homes and environmentally sensitive features, NMPs, public notification (including signage), financial assurances, local authority, inspections, and training. The combined state and federal restrictions, such as the federal access and harvesting

restrictions and the state requirement for signage, work in concert to mitigate risk. Any person who land applies biosolids must obtain authorization to do so under a VPA permit and conduct all land application activity in conformance with that permit. The 2007 Virginia General Assembly commissioned a group of experts to study the issues surrounding biosolids. The Biosolids Expert Panel (the Panel) published their final report in 2008. The Panel determined that as long as biosolids are applied in conformance with all state and federal laws and regulations, that there is no scientific evidence of any toxic effect to soil organisms, plants grown in treated soils, or to humans (via acute effects or bio-accumulation pathways) from inorganic trace elements (including heavy metals) found at the current concentrations in biosolids. DEQ and the State Water Control Board (SWCB) considered the Panel's review and recommendations when the VPA regulations were amended in 2013. The Panel noted in its report that "while certain contaminants have been found in land-applied biosolids, mere presence will not in itself cause water quality impacts without a means to reach ground and surface waters. Additionally, presence does not indicate danger without a toxic concentration." Research into the safety and use of biosolids as an agricultural soil amendment is ongoing. The Clean Water Act requires the Environmental Protection Agency (EPA) to review existing sewage sludge regulations at least every two years. The purpose of the review is to identify additional pollutants that may be present in sewage sludge, and if appropriate to develop regulations for those pollutants. DEQ, along with VDH, monitor the progress of the research conducted by EPA in this regard, and if necessary, will respond to significant findings with recommendations to modify the VPA regulation. During the summer of 2014, VDH performed a follow-up review of the VPA regulations in light of research that had been conducted since 2008. Consistent with earlier reviews, VDH's recent literature review did not find any contributory associations between biosolids exposure and adverse health effects. Until there is new relevant research to conclude otherwise, DEQ is confident that the VPA regulations and permits are protective of human health and the environment.

#### 4. Medically Sensitive Individuals

*(Janet Adere, Don Burrridge, Norman Collins, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, Brian Ullmann & Cindy Dickerson, Reid Smith, Victoria & Mark Collins, Joyce Cool, Joshua Arndt, Robert & Robin Barone, Renee & Stan Swigonski, Joanne Boenig, Shaheen Alikhan, Elke Alikhan, Betty Jinnett, Nancy Lotts, Jeff Vaughan, C.W. Williams, Fred Gruber, Kama Allen)*

Comments were received questioning studies that had been conducted to protect individuals who are highly susceptible to respiratory illnesses such as children and the elderly.

- Buffers not sufficient;
- No tracking of illness related to exposure;
- If not a "medical hazard" then why are buffers needed;
- VDH review process not adequate; and
- Land application may occur on properties adjacent to persons requesting further VDH review before review process is complete.

*Staff Response:* The draft permit contains the provisions established in the VPA Permit Regulation at 9VAC25-32-560 regarding establishment of setbacks and agency response to requests for extended setbacks. DEQ developed these regulations in consultation with VDH. DEQ also developed a procedure for working with VDH to consider extended setbacks for citizens with specific health conditions. When a citizen attests that standard setbacks from homes and property lines should be extended based on medical reasons, DEQ will double the setback distance upon written request from the citizen's physician. DEQ provides the forms to those requesting extended setbacks with instructions as to where to send the form once completed. Setback distances may be extended beyond the doubled setback where an evaluation by VDH determines that an additional setback is necessary to prevent adverse effects to the health of an individual. In the event that a citizen requests an individual assessment regarding a site with an active permit, the land application of biosolids may continue while the health investigation is conducted, under the following circumstances:

- i. Extended setbacks of 400 ft from the residence and 200 ft from the property line are implemented;
- ii. DEQ has verified compliance with all regulatory requirements at the site; and
- iii. The Health Commissioner has not issued an emergency order to cease operation of the biosolids use activity pursuant to §32.1-13 of the Code of Virginia.

DEQ refers individuals who report illnesses related to biosolids exposure to the VDH Local District Health Director.

#### 5. Wildlife and Unrestrained Domestic Animals

*(Don Burridge, Norman Collins, Timothy Meier, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, Joyce Cool, Olivia Ryan, H.C. Parrish, William Montminy, Stanley & JoAnn Nordlund, Shaheen Alikhan, Elke Alikhan, Michael Jinnett, Nancy Lotts, Jeff Vaughan, Jacob Vaughan, C.W. Williams)*

Comments were received concerning how wildlife and unrestrained domestic animals moving through land application sites may be affected, in contrast to livestock that are required to be excluded from land application sites for specified periods of time.

*Staff Response:* This matter was also considered by the Biosolids Expert Panel and no additional requirements were included in the VPA Regulation, as it was found that the limited exposure to wildlife poses no greater threat than normal agricultural activity. Additionally, the federal risk assessment did not find that wildlife posed a significant risk of pathogen transmission.

## 6. Odor

*(Janet Adere, Don Burridge, Norman Collins, James and Constance Baker, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, Edward Hanley, William & Lidia Dawson, Brian Ullmann & Cindy Dickerson, Reid Smith, Victoria & Mark Collins, Joyce Cool, Olivia Ryan, Joshua Arndt, Robert & Robin Barone, Teresa Newman, William Montminy, Shaheen Alikhan, Elke Alikhan, Michael Jinnett, Betty Jinnett, Nancy Lotts, Jeff Vaughan, Kathie Walker, C.W. Williams, Joanne Boenig)*

Comments were received expressing concern in regard to the lingering odor associated with biosolids.

*Staff Response:* The regulations do not prohibit odors. Biosolids, at times, can and do have objectionable odors. The regulation does require the mitigation of odors [9VAC25-32-60.F.1.c.(3)] by both the wastewater plants generating biosolids and the land applicers. Accordingly, the draft permit requires an Odor Control Plan with the following:

- (a) Methods used to minimize odor in producing biosolids;
- (b) Methods used to identify malodorous biosolids before land application (at the generating facility);
- (c) Methods used to identify and abate malodorous biosolids if delivered to the field, prior to land application; and
- (d) Methods used to abate malodor from biosolids if land applied such as incorporation, if applicable.

The odor control plans will become an enforceable part of the permit.

## 7. Outdated Laws, Regulations, Permits and Procedures

*(Kathleen Small, William Small, Joanne Boenig, William Montminy, Samuel Atkins, Stanley & JoAnn Nordlund, Matthew Olwell, Shaheen Alikhan, Elke Alikhan, Kathie Walker, Michael Jinnett, Betty Jinnett, Nancy Lotts, Jeff Vaughan, C.W. Williams, Kathie Walker, Lidia Epp, Fred Gruber, Thomas Miller, Kama Allen, Tyla Matteson)*

Comments were received addressing VPA laws, regulations, and draft permits and the lack of confidence that the permits encompass or thoroughly regulate all potential situations:

- Outdated laws and regulations that are not protective of human health and the environment;
- Program needs to catch up to the science, risks are unknown;
- DEQ not conducting a public meeting or public notice for modifications to add land less than 50% of the original total acreage permitted;
- DEQ needs to re-visit insufficient criteria in the permit
- Adjacent land owners are “subjected to forced exposure”
- Emerging contaminants not adequately researched or regulated; and
- Don’t trust agency findings and responses to comments are “cookie-cutter”.

*Staff Response:* DEQ has processed the permit application and prepared a draft permit in accordance with the law and regulation as they exist. It is not DEQ’s role in this permit process to assess the adequacy of the regulations. The proposed draft permit is an original issuance of a VPA permit. As part of the issuance process, and in accordance with the VPA regulation, adjacent landowners were notified, public meetings were held, and public notice of the draft permit was completed. The proposed draft permit contains all of the criteria required by the state and federal regulations such as setbacks from homes and environmentally sensitive features, NMPs, public notification (including signage), financial assurances, local authority, inspections, and training. All VPA permits are drafted and modified in accordance with VPA

regulation and State Water Control Law, with modification procedures for biosolids permits specifically outlined in § [62.1-44.19:3.C.10.](#) and § [62.1-44.19:3.4.](#) of the Code of Virginia. When DEQ receives a modification request for an existing permit that results in the addition of less than 50% of the originally permitted acreage of the permit, landowners adjacent to the land proposed to be added are notified; however, a public meeting or public notice in the newspaper are not required. Modifications are considered cumulative and once the addition of land exceeds 50% of that included in the original issuance, DEQ follows a modification process identical to that for the original permit issuance that includes a public meeting and newspaper public notice in addition to notification of adjacent landowners. All comments are reviewed thoroughly and in their entirety. Responses to comments are similar because the concerns expressed are similar.

#### 8. Future Studies of Biosolids Will Determine it to be Unsafe

*(Edward Hanley, Reid Smith, Shaheen Alikhan, Elke Alikhan, Charles Laughlin, Kathie Walker, C.W. Williams, Lidia Epp, George Allen, Fred Gruber, Kathie Walker, Jeff Vaughan, Thomas Miller, Kristie Weygant)*

Comments were received suggesting that while it is considered safe today, further studies may reveal detrimental effects of biosolids:

- Risks are unknown;
- Lack of studies on some of the potential effects of substances and elements found to be in biosolids; and
- Concern that biosolids could contain harmful substances or elements that the scientific community has not determined to be harmful.

*Staff's Response:* Research into the safety and use of biosolids as an agricultural soil amendment is ongoing. Recognizing this, the Clean Water Act requires EPA to review existing sewage sludge regulations at least every two years. The purpose of the review is to identify additional toxic pollutants that may be present in sewage sludge, and if appropriate to develop regulations for those pollutants. At this time, EPA has not identified any additional toxic pollutants for regulation under federal law. DEQ and VDH monitor the progress of the research conducted by EPA, and if necessary, will respond to significant findings with recommendations to modify the VPA regulation. During the summer of 2014, VDH performed a follow-up review of the VPA regulations in light of research that had been conducted since 2008. Consistent with earlier reviews, VDH's recent literature review did not find any contributory associations between biosolids exposure and adverse health effects. Until there is new relevant research to conclude otherwise, DEQ is confident that the VPA regulations and permits are protective of human health and the environment.

#### 9. Property Values, Truck Traffic and Quality of Life in Louisa County

*(Janet Adere, Don Burrige, Norman Collins, James and Constance Baker, Timothy Meier, David Bently, Jeff & Cynthia Hildenbrand, Iva & John Vaeth, Vassili Zakharov, Earl Eck, Robin Insley, Susan Tulloch, Edward Hanley, William & Lidia Dawson, Brian Ullmann & Cindy Dickerson, Reid Smith, Victoria & Mark Collins, Joyce Cool, Robert Fogg, Joshua Arndt, Robert & Robin Barone, Teresa Newman, William Montminy, Stanley & JoAnn Nordlund, Kathie Walker, Charles Laughlin, Betty Jinnett, C.W. Williams, Kama Allen)*

DEQ received comments that alleged that there would be a decrease in property values and a negative effect on the quality of life as a result of land application of biosolids:

- Financial implications due to increased truck traffic;
- Effect on quality of life as a result of decreased ability for recreational use of Lake Anna and the outdoors; and
- Decreased property value or rental income as a result of odors and contaminated streams.

*Staff Response:* The impact of land application on property values was an inherent consideration during the development and adoption of the VPA regulation. The draft permit was prepared in accordance with the regulation. In 2007, HJR 694 required the Biosolids Expert Panel to respond to the question of whether odors from biosolids could affect property values or impact human health and well-being. The Panel's final report recognized that odors from biosolids could potentially impact property values, but could not confirm such an impact or the extent of such an impact based on the current body of scientific literature and information presented directly to the Panel. The Panel recommended that DEQ consider requiring that municipal biosolids generators be required to have odor control plans to ensure that the generator is looking at critical control points to minimize odors, reducing the potential that odor would impact adjacent properties. The draft permit includes a requirement for odor control plans from both the generators of the biosolids land applied as well as the land applier. The draft permit requires that transport routes shall comply with all VDOT requirements and

standards as specified in section 9VAC25-32-540 of the VPA Permit Regulation. The draft permit also specifies the operational requirements of vehicles that may be used to transport biosolids, as described in sections 9VAC25-32-420.A. and 9VAC25-32-540. of the VPA Permit Regulation.

#### 10. Biosolids Land Appliers Do Not Conform to State Regulations and Local Ordinances

(*Joanne Boenig, C.W. Williams, )*

DEQ received the following comments regarding non-compliance:

- Louisa citizens have “suffered from...state regulation violations and local ordinance violations;”
- Monitoring must be conducted by “responsible people;”
- Notification signage does not conform to local ordinances

*Staff Response:* If the permit is approved by the Board, DEQ will perform inspections to ensure compliance and will initiate enforcement action if applicable. Any injunctive relief and civil charges sought in an enforcement proceeding will be consistent with applicable law as well as DEQ enforcement guidelines and appropriate for the severity of the violation. The proposed permit would allow Synagro to land apply biosolids in a manner that is protective of human health and the environment. Pursuant to Va. Code § 62.1-44.22, the fact that any owner holds or has held a permit issued by the Board shall not constitute a defense in any civil action involving private rights of adjacent or nearby property owners. In addition, Synagro maintains an environmental liability policy applicable to all their land application activity in Virginia, pursuant to Va. Code § 62.1-44.19:3(H) to pay claims for cleanup costs, personal injury, and property damage resulting from the transportation, storage, or land application of sewage sludge. DEQ assesses compliance with Virginia law and regulation, and does not assess compliance with local ordinances.

#### 11. DEQ Does Not Encourage Counties to Adopt Local Ordinances Concerning Biosolids

(*C.W. Williams*)

DEQ received comments regarding:

- Neither DEQ, VDH, nor DCR have been on record as supporting the adoption of local biosolids ordinances; and,
- DEQ does not provide complete information to localities.

*Staff Response:* Pursuant to § 62.1-44.19:3.I of the Code of Virginia, any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations. A local monitor increases the oversight of biosolids activities and provides a local presence to communicate with concerned residents. DEQ provides information regarding biosolids permitting to localities as requested. The decision to adopt a local biosolids ordinance and utilize a local monitor is the decision of the locality.

#### 12. Biosolids Testing Limitations

(*Stanley Nordlund, Michael Jinnett, Shaheen Alikhan, Janet Adere, David Bently, Jeff & Cynthia Hindenbrand, Joshua Arndt, Robert & Robin Barone, Nancy Lotts, Jeff Vaughan, C.W. Williams*)

DEQ received comments regarding:

- Biosolids are not tested prior to land application;
- Sites are not tested after land application;
- No testing performed of nearby waterways; and
- Citizens must pay out of pocket for additional testing.

*Staff Response:* The draft permit requires biosolids testing that aligns with the provisions outlined in Section 9VAC25-32-356 of the VPA Permit Regulation. Pursuant to § 62.1-44.19:3.J. of the Code of Virginia, persons requesting additional testing and analysis of biosolids shall pay the costs of sampling, testing, and analysis. Additional analyses conducted in accordance with § 62.1-44.19:3.J. of the Code of Virginia will only include the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level.

#### 13. Alternatives to Land Application

(C.W. Williams)

DEQ received comments that alternatives to land application are available.

*Staff Response:* The decision as to which method of solids disposal will be used is the prerogative of the waste water treatment facility.

14. Support of Permit Issuance and Biosolids Use:

*(Robert Crockett representing Virginia Biosolids Council, Ronald Sharp, Troy Lamb, John Terrell, Jim Riddell, Tom Hanley, Alex Pinter, John Austin, Jack Manzari, Sharon Manzari, Richard Hartley, Lonnie Kemp, Margaret Ann Rigsby, Lee Rosson, Ralph Brickman, Roy Hopkins, David Pinter, David Shaw, Charles Rosson, Fred Massie)*

DEQ received comments that supported the issuance of the permit and biosolids use. These comments included:

- Long time use of biosolids with no environmental or health effects observed;
- Increased crop yields with use of biosolids;
- Reduced fertilizer costs supporting ability to continue farming;
- Improved soil quality with use of biosolids;
- Reduced runoff due to soil quality increasing infiltration and increased plant growth intercepting runoff ;
- Absence of health issues in young and old family members living near sites;
- EPA and VA regulations require pathogen reduction, with some sources at Class A reduction levels;
- Research indicates risks from presence of antibiotics and antibiotic resistant bacteria is low;
- Research indicates risk from pharmaceuticals and personal care products is low;
- Research indicates that risk of exposure to polybrominated diphenyl ethers (PBDEs) and estrogenic compounds is low, and exposure is more likely due to other sources, such as household dust;
- Additional research is needed, but current studies do not indicate land application of residuals to be a major source of exposure;
- Additional research is ongoing by EPA, USDA, universities and municipal governments;
- EPA requires a review of the federal regulations for biosolids every two years to review the need to regulate additional pollutants; and
- Science supports the beneficial use of biosolids in agriculture and on forestland.

*Staff Response:* DEQ acknowledges the comments provided in support of permit issuance.

**Virginia Water Protection Permit Program Regulation (9VAC25-210-10 et seq.);  
Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC-25-660-10 et seq.);  
Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670-10 et seq.);  
Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680-10 et seq.); and  
Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690-10 et seq.)**

The Virginia Department of Environmental Quality seeks approval from the State Water Control Board (Board) of final amendments to the five Virginia Water Protection (VWP) Permit Regulations noted above and to reissue the four VWP general permits. In October 2013, the Virginia Department of Environmental Quality (DEQ or Department) began the process necessary to reissue the four Virginia Water Protection (VWP) general permit regulations prior to their expiration on August 1, 2016 and to revise the underlying base regulation, Virginia Water Protection Permit Program Regulation 9VAC25-210, which provides much of the overarching authority in administering the VWP general permits. Program staff across all regions identified internal practices described in guidance but not regulation; gathered staff comments and concerns based on experiences over time; held conference calls to discuss priority issues; reviewed program policies and guidance; developed internal work groups to research topics; and prepared a list of topics to serve as the basis for the Notices of Intended Regulatory Action (NOIRAs).

In April 2014, the NOIRA for 9VAC25-210 was circulated for Executive Branch review; comments were received; and revisions made to the content. The remaining NOIRAs were exempt from Executive Review at that time. DEQ then submitted all five NOIRAs on May 13, 2014 to the Virginia Registrar for publication.

Five NOIRAs were published in the Virginia Register of Regulations for a 30-day comment period, beginning on June 2, 2014 and ending on July 2, 2014. DEQ utilized the participatory approach by forming an ad hoc Citizens Advisory Group (CAG) that held nine (9) public noticed meetings (August 7, 2014; August 25, 2014; September 9, 2014; September 22, 2014; *October 6, 2014*; October 15, 2014; *November 3, 2014*; December 8, 2014; and January 8, 2015). The CAG came to consensus on most of the revisions initially proposed by the Department and/or CAG members, with the exceptions of general permit transition and term length applicable to each general permit regulation, and revisions to certain surface water withdrawal activity provisions in 9VAC25-210. Each of these issues were detailed in the March 15, 2015 SWCB memorandum.

At the March 30, 2015 State Water Control Board meeting, the DEQ brought before the Board a request to proceed to notice of public comment and hearing on the proposed amendments to the five regulations listed above. The Board was provided with the amendments pertaining to reissuance of the four VWP general permits; incorporation of existing guidance and provisions that resulted from Virginia General Assembly actions; and incorporation of program-related state and federal regulatory actions over the last decade or more, including those related to surface water withdrawals. During the March 30, 2015 meeting, the Board suggested placing a time limit on how long an administrative continuance may last and also suggested that the public notice should emphasize the proposed amendments where the Citizen Advisory Group was unable to reach consensus. Based on the staff recommendation, the Board voted unanimously to approve noticing the proposed amendments to the five Virginia Water Protection Permit Program Regulations for public comment and hearing.

The five Proposed Virginia Water Protection Permit Program Regulations were public noticed on November 16, 2015 for a 75-day public comment period. Three public hearings were held: January 11, 2016 in Williamsburg, Virginia; January 12, 2016 in Woodbridge, Virginia; and January 13, 2016 in Roanoke, Virginia. The public comment period ended on Friday, January 29, 2016.

#### Amendments to 9VAC25-210

Summarized below are the general amendments being made to the VWP Permit Program Regulation 9VAC25-210, as described in the Proposed stage:

- Made editorial changes: word choice, word consistency, spelling out acronyms, correcting/updating citations, correcting grammar and punctuation, alphabetizing and updating list of Forms & Documents.
- Relocated, revised, and deleted existing definitions.
- Added new definitions.
- Added new Part V in 9VAC25-210 for surface water withdrawal related provisions; relocate definitions and provisions applicable to surface water withdrawal activities; clarify exclusion regarding withdrawals from tidal waters.
- Reorganized lists (information; modifications; compensation).
- Added provisions for administrative continuance.
- Deleted citation for water permit application fees (9VAC25-20-10 et seq.).
- Increased the amount of additional impacts allowable under a minor modification.
- Added state-wide information provision to consolidate similar text.
- Revised and reorganized existing application requirements.
- Added new application requirements, such as geographic information system (GIS) shape files.
- Revised requirement for assessment of wetland functions.
- Revised and clarified existing exclusions from permitting.
- Revised and clarified compensation requirements, including deleting references to multi-project mitigation sites, revising the compensatory mitigation hierarchy, limiting compensation required for open water, revising the timing of protective mechanism recordation, revising the agency approval of in-lieu fee programs.
- Revised and clarified requirements to change a permit after issuance.

Summarized below are the regulatory amendments to the VWP Permit Program Regulation, 9VAC25-210, except for surface water withdrawal related amendments (see below), since the Proposed stage:

- Made only minor amendments to the provision for administrative continuance of individual permits (9VAC25-210-65) by replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B, 'or the date on which the board denies the application'. This provision did not reach consensus during the Citizen Advisory Group process. The Department considered adding a timeline on the action but found that an amount of days would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. No amendments are necessary in Section 35 of each general permit regulation.
- Deleted the proposed amendments to slightly increase the amount of impacts that could be processed under the individual permit minor modification process versus the major modification process and reverted to the limits established in the existing regulation. The Department received one comment opposing the proposal and none supporting. The Department could not establish a clear connection at this time between the proposal and the amount of time to be saved on either the applicant's or staff's parts.
- Amended Section 116 C of the regulation to clarify that compensation for open water impacts remains at the discretion of the Department but that certain open water features are important enough to warrant compensation on a case by case basis.
- Amendments made to application requirements are as follows:
  - Deleted the proposed requirement for applicants to provide GIS shape files as part of complete application, primarily due to public comments expressing concern about the economic effect on small businesses.
  - Deleted the proposed requirement for applicants to provide a list of riparian landowners within certain distances from impacts in waters, primarily due to statute requirements for notifying these landowners and potential conflict with Administrative Process Act.
  - Added a requirement to the proposed text for the average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally omitted; also revised punctuation in the same requirement and corrected the word 'united' to 'unified'.

Additionally, the following amendments were made in response to public comments received on the Proposed stage:

- Deleted 'proposed' as a modifier to threatened and endangered species and critical habitat and added instead, 'The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.' Also revised the phrase 'to be a taking' to 'result in a taking'.
- Reinserted 'in accordance with 9VAC25-20' were appropriate to refer to the Permit Application Fee Regulation.

#### Amendments Specific Part V of 9VAC25-210 - Surface Water Withdrawals

Summarized below are the final regulatory amendments to Part V of the VWPP Program Regulation, 9 VAC 25-210, specific to the surface water withdrawal provisions of the regulations.

- Reorganization of 9 VAC 25-210 to consolidate provisions specific to surface water withdrawals under new Part V. This provides greater clarity in identifying the provisions that are applicable to withdrawal activities versus those that pertain to "wetland" projects. Previously, the provisions for withdrawals were scattered throughout the regulation without clear linkages between provisions, creating confusion in the regulated community about the requirements for withdrawal projects, resulting in incomplete applications and longer processing times.
- Definitions were added or revised to provide clarity in the meaning of terms or to provide consistency with other similar Department programs. Amendments have been made to the following definitions: "Drought of Record", "Human consumption", "Instream flow", "Major river basin", "Nonconsumptive use", "Variance", and "Water supply plan"

- Amendments have been made to the exclusion requirements for surface water withdrawals initiated between July 1, 1989, and July 25, 2007, to provide clarity and to remove sunset provisions, that passed in 2008, on the submission of certain information. Additional amendments have consolidated and reorganized requirements that exclude withdrawals from permitting based upon volume and use to reduce confusion regarding this set of exclusions. The meaning or content of the exclusions are not changed by these amendments.
- The requirement for a coordinated review with VMRC for surface water withdrawals was moved to a standalone section under Part V. The amendments to this section include the addition of a reference to the section of Code that directs coordinated reviews between DEQ and VMRC and to provide detail for clarification of the joint public notice requirement.
- The informational requirements for a complete application have been consolidated and organized into one detailed list of information necessary to conduct a review of any non-emergency withdrawal. This revision also removes the distinction between minor surface water withdrawal and major surface water withdrawal, which was found to be only a regulatory distinction and not reflective of the case by case differences in permit review. Previously, while the regulations required the same information for both types of withdrawals, this was not clear in practice and led to confusion and longer processing timeframes because of the need to request the additional information after the application was submitted. Other amendments to this section include the addition of informational requirements that address recent statutory changes and recent revisions to the Joint Permit Application.
- A new section has been added under Part V to address reissuance of permits for the continuation of a surface water withdrawal. This amendment was needed to identify the informational requirements required for a permittee to apply for continued operation of an established withdrawal (reissuance). In order to streamline the review process, the provision reduces the submission of information (that continues to be accurate) that is already in the Department's possession as submitted as part of a previous application. The section includes a reference for allowance of an administrative continuance for a permit if a complete application is filed in a timely manner.
- Part V now identifies the circumstances under which a permit may be modified. Previously, the regulation only had one general provision that addressed modifications of surface water withdrawals. This resulted in uncertainty and subjectivity by both staff and permittees as to what type of permit changes would be considered major or minor permit modifications. These amendments provide more specificity and clarity regarding the representative types of changes that may qualify under each class of permit modifications.
- Throughout Part V, sections were revised, where applicable, to update citations and provide consistency with revised definitions.

No changes in response to significant comment received are being made on the following amendment.

- Prior to this action, the definition of "Beneficial use" did not conform to the definition contained in Chapter 3.1 of the State Water Control Law. The proposed regulation sought to conform the definition in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law. The definition included in these revised VWP regulations is from Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. The Department believes it is appropriate to use the definition for beneficial use that is used in the State Water Control Law of the Code of Virginia. The General Assembly has considered the issue several times, most recently after the 2007 VWP amendments and did not make the change (Acts of Assembly, Chapter 659). The implementation of this definition has been recognized as a balancing process by the Department. These definitions and statutory directives in the State Water Control Law reflect the General Assembly's recognition that the many uses of water may at times be conflicting. The Commonwealth's water policy, as set forth in the State Water Control Law, requires the Department to balance existing and proposed uses, with the directive that domestic and other existing beneficial uses shall be considered the highest priority uses (see Code § 62.1-44.15:22(A)). In considering a water protection permit, the Department is required to balance the various uses, and the statutory directive that the Board "protect" existing instream beneficial uses must be viewed in this context. That directive requires the Department to exercise its

judgment to ensure that such uses be protected, not in an absolute sense and at the cost of rejecting any proposed uses, but within a reasoned perspective in view of competing statutory considerations. (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).

In response to comments received during the public comment period for the draft amendments, additional changes are being made to Part V of 9 VAC 25-210 since originally proposed. The following changes are being made in response to public comments:

- A definition of “public water supply safe yield” was proposed to provide clarity on the application of the term under the respective authorities of the Department and the Virginia Department of Health. This proposed change received significant comment and the definition is being removed from the final regulatory amendments. While the Department has agreed to remove the definition from this particular regulatory action, this does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. DEQ is responsible for evaluating, in cooperation with Virginia Department of Health (VDH) and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. By the same token, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as “water rights.” There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. The State Water Control Board began publishing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day. The Department will continue to exercise its long-standing role.
- The following revisions are being made to the evaluation of project alternatives section of 9 VAC 25-210-360:
  - Replacing the phrase “local water supply need” with “need for water to meet the project purpose” and deleted “local” near end of sentence in -360 A to clarify that the requirement applies to all surface water withdrawals.
  - Adding the term “public water supply” before the term “safe yield” in -360 A 1 b and -360 A 3 c (5) to clarify the traditional usage of the term with public water supplies.
  - Revising -360 A 2 a and -360 A 2 b to include “if applicable” after the informational requirement to clarify that these requirements may not apply to non-public water supply surface water withdrawals.
  - Modifying -360 A 4 to clarify the specific requirements of the previous subsection (-360 A 3) that apply to non-public water supply surface water withdrawals. Specifically, revising “all applicable items included in subdivision 3 of this section” to “the following items of subdivision 3 of this section: 3 a (3) through (4) and 3 c. The analysis shall also include applicable items of subdivision 3 a (1) through (2) and 3 b.”
- The following revisions are being made to the permit modification section under 9 VAC 25-210-380:
  - Revising -380 A 4 to provide examples of water use types to clarify the modification criterion. The amendment consists of adding the following sentence at the end of the subdivision: “Examples of uses include, but are not limited to, agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation.”

- Modifying -360 B 3 to insert the following phrase “, including increasing the storage capacity for the surface water withdrawal,” after “Changes to the permitted project” to allow consideration of changes in storage capacity under a minor modification of the permit.

In addition to the changes listed above, the following additional changes are being made to Part V of 9 VAC 25-210 since originally proposed to clarify language or address typographical errors.

- Grammatical corrections to improve readability or to provide consistency with existing text elsewhere in the regulation or with changes made by the Registrar elsewhere in the regulation.
- Grammatical corrections made by the Registrar.

### Amendments to VWP General Permit Regulations

Summarized below are the general amendments being made to the four VWP general permit regulations, as described in the Proposed stage:

- Editorial changes: word choice, word consistency, spelling out acronyms, correcting/updating citations, correcting grammar and punctuation, alphabetizing and updating list of Forms & Documents.
- Relocating, revising, deleting existing definitions.
- Adding new definitions.
- Revising regulation, general permit, and authorization expiration dates.
- Revising general permit transition provisions.
- Revising and reorganizing existing application requirements.
- Added new application requirements, such as geographic information system (GIS) shape files.
- Revise requirement for assessment of wetland functions.
- Revising and clarifying existing exclusions from permitting.
- Revised and clarified compensation requirements, including deleting references to multi-project mitigation sites, limiting compensation required for open water, revising the timing of protective mechanism recordation.
- Revising and clarifying requirements to change a coverage after issuance.
- Added provisions for administrative continuance.
- Deleted citation for water permit application fees (9VAC25-20-10 et seq.).
- Added state-wide information provision to consolidate similar text.

Summarized below are the regulatory amendments to the four VWP general permits since the Proposed stage:

- Amended the proposal of a general permit term of 15 years to 10 years for each general permit contained in Section 100. While public comment appeared to generally support the 15-year proposal, the maximum allowable by § 62.1-44.15(5a), the Department determined that a shorter term would provide greater flexibility for the time being, considering other, related public comment.
- Deleted the regulation expiration date in each regulation, as well as the separate authorization expiration provisions (3 or 7 years). Transition language was developed based on the legal advice received in 2015 from the Attorney General's office that the Code did not appear to support the existing regulatory provisions regarding permit terms. The language currently proposed allows transition that is consistent with other Department permit programs. Four comments were received that expressed concern about applicants applying late in the general permit term, regardless of the term length, and how these projects in some cases would otherwise qualify for general permit coverage, but could not be completed in the allotted time. While the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which a general permit expires and transitions into a newly issued or reissued general permit. The following related amendments to Sections 27 and 100 have been made since the Proposed stage:

- Deleted phrase ‘or unless a notice of project completion is received by the board’ due to unintended potential release of permittee from permit conditions.
  - Deleted commas inserted by Registrar due to change in meaning of proposed text.
  - Expiration year was changed from 2031 to 2026.
- Amended Section 70 of each general permit regulation to clarify that compensation for open water impacts remains at the discretion of the Department but that certain open water features are important enough to warrant compensation on a case by case basis.
  - Amendments made to application requirements are as follows:
    - Deleted the proposed requirement for applicants to provide GIS shape files as part of complete application, primarily due to public comments expressing concern about the economic effect on small businesses.
    - Deleted the proposed requirement for applicants to provide a list of riparian landowners within certain distances from impacts in waters, primarily due to statute requirements for notifying these landowners.
    - Added a requirement to the proposed text for the average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally omitted; also revised punctuation in the same requirement and corrected the word ‘united’ to ‘unified’.
  - Amended many provisions for editorial reasons, including the review of the text by the Virginia Registrar’s office, the subsequent review by Department staff.
    - Added back omitted words/phrases.
    - Struck words/phrases that were not stricken as the Department intended.
    - Revised inconsistent use of words/phrases.
    - Corrected citations or added missing citations.
    - Added sentence to the end of Section 100, Part I A 1 due to staff comment about clarifying the need for a permittee’s compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit.
    - Deleted a clause in Section 27 B due to staff comment, which unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage.

Additionally, the following amendments were made in response to public comments received on the Proposed stage:

- Deleted ‘proposed’ as a modifier to threatened and endangered species and critical habitat and added instead ‘The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.’ Also revised the phrase ‘to be a taking’ to ‘result in a taking’.
- Reinserted ‘in accordance with 9VAC25-20’ were appropriate to refer to the Permit Application Fee Regulation.
- Clarified provision on modifications in Section 80 A for consistency with Section 30 A by inserting ‘for a single and complete project’ after ‘impacts’.
- Revised reference to Procedural Rule No. 1 to be consistent with the citation used in 9VAC25-210.
- Revised ‘signed’ to ‘submitted’ in the definition of Notice of Project Completion in 9VAC25-660 and -680.
- Changed ‘activities’ to ‘projects’ when referring to linear transportation in Section 60 B of the regulations.

**Report On Facilities In Significant Noncompliance:** There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance for the quarter ending September 30, 2015.

**Living Shorelines Loan Program Guidelines:** During their 2015 session, the Virginia General Assembly amended *Chapter 22 of the Code of Virginia* by adding §62.1-229.5. The new code section further expanded the activities of the Virginia Clean Water Revolving Loan Fund by allowing the State Water Control Board to authorize low interest loans from the Fund to a local government for establishing living shorelines or to a local government that has developed a funding program to individual citizens for the purpose of establishing living shorelines to protect or improve water quality. Further, the legislation authorized the Board to develop guidelines for the administration of those living shoreline loans. At its January 2016 meeting, the Board authorized the staff to present the draft Living Shorelines Loan Program Guidelines to the public for their review and comment. A public meeting was convened on February 23<sup>rd</sup> and the public

comment period ended on February 29th. Notice of the meeting and public comment period was posted on the Virginia Regulatory Town Hall, the DEQ public calendar, and DEQ's Clean Water Financing and Assistance Program website.

Comments/questions were received from three people and are summarized, along with the DEQ responses, follow:

From: Joe Wood, Ph.D. Virginia Staff Scientist, Chesapeake Bay – On behalf of CBF, he thanked DEQ for its leadership in establishing the Living Shorelines Loan Program and commended DEQ and the State Water Control Board for their efforts in promoting the new loan program and working with local governments to make it a success. No response needed.

From: Kevin R. Du Bois, PWS, PWD, CFM

1. The guidelines should define living shorelines (LS) so that they don't include wetlands in front of bulkheads, revetments, or other hardened shorelines as these are not sustainable with sea level rise and are a poorer use of limited funds and incentives. See the definition reference in the *Project Eligibility/Requirements* section. A. Living Shorelines have been defined in the Code of Virginia and we do not have the authority to change that definition. In order to ensure quality control in the design of living shorelines being funded under this program, all projects must be certified by the Virginia Marine Resources Commission (VMRC), which is the state agency with authority and responsibility over living shorelines in Virginia.

2. Can the recipients of funds from a local government plan be civic organizations and/or NGO's in addition to individuals? Civic leagues, university organizations, and non-profits have all been involved in building LS projects. A. No. The statute authorizing the program specifically limits the recipients of funds from the local government to "individual citizens of the Commonwealth". A civic league or NGO may be involved in the projects but the borrower of the funds must be an individual citizen.

3. If applications are accepted in July, is it your intention that loan funds wouldn't be used until the following spring? Optimal time for planting wetlands is in April. Would application submission requirements include the submission of all local, state, and federal wetland permits? A. This program will follow the same schedule as our other loan programs as discussed below. Applications from local governments are received in June-July. A tentative project funding list is presented to the State Water Control Board (SWCB) at their fall meeting for approval. Meetings are scheduled with the tentative loan recipients in October, a public meeting is held in November, and the final list is presented to the SWCB in December for authorization. The loans to the authorized localities could then be closed once they have either (1) received construction bids and all environmental permits (in the case of them constructing their own living shorelines projects) or (2) once they have developed and submitted their local plans (in the case of them establishing a local program for individuals to construct living shorelines). In either case this should allow for projects to be started in the spring. Environmental permits would not be required for submitting applications but would be required prior to commencement of construction.

4. As a condition of loan application approval, would the date of project commencement be specified? Would the project completion date be specified or would the project have to be completed prior to wetland permit expiration? A. The application will include the project schedule and readiness to proceed will be considered in the application review. Projects would have to be completed in accordance with all permits.

5. Has the State Water Control Board developed a Local Plan template to guide their development? It might be a good use of grant funds to pay a local NGO to prepare a template to be used throughout the state. A. The Guidelines include an outline of what should be included in a Local Plan. DEQ does not have any grant funds to develop a more detailed template. The locality needs to have the ability to develop a plan that works for them and their residents. All plans have to be approved by DEQ and VRA before loans are closed and funds are available. The Middle Peninsula Planning District Commission is in the process of finalizing their local plan and will provide it for others to use as requested.

6. The minimum LS Loan amount of \$100,000 is probably excessive for small residential coir log projects. Why not make that lower, say \$20,000? This might compliment private landowner phased efforts. A. The \$100,000 minimum applies to the loan to the locality; there is no specified minimum loan amount to the individuals. We have added a sentence to clarify this point. We are only allowed to make loans to local governments and if the locality is looking to create a loan program, they need to have enough funds to make multiple loans to individuals. There is no

minimum amount that a locality has to loan its citizens, that is something the locality can decide and include in their local plan if they so choose.

7. Regarding reasonable and necessary costs associated with the establishment of a LS, I would recommend that documentation standards be established. Who reviews the reasonable and necessary standards (who is trained in LS construction and implementation)? Are riparian buffer enhancements a valid expense under the proposed standards? (NOAA LS Guidelines would suggest they are). A. Based on our experience administering a number of diverse funding programs, we believe it is best to remain flexible and use best professional judgment when determining whether costs are reasonable and necessary. Riparian buffer enhancements would be considered a valid expense for this program.

From: Glenda C. Booth, Chair, Fairfax County Wetlands Board

I am writing to support the December 2015 Virginia Clean Water Revolving Loan Fund draft living shorelines loan program guidelines. My comments are based on my experience on the Fairfax County Wetlands Board for over 25 years, the last 15 as chair.

We support the goals reflected in the enactment of legislation in 2015 to improve water quality and prevent the pollution of state waters by expanding the activities of the Virginia Clean Water Revolving Loan Fund and creating this new loan program. It is our understanding that this addition would allow the State Water Control Board to authorize low-interest loans to local governments from the Fund for the purpose of establishing living shorelines. We understand that under this law loans would be available to a local government to establish living shorelines and to a local government that has developed a funding program to provide low-interest loans to private property owners to help establish living shorelines.

The Fairfax County Wetlands Board was the first locality in the state to adopt a policy that encourages living shoreline approaches. Despite that policy, in our experience, applicants for wetlands permits do not always consider using living shoreline approaches and many contractors are unaware of the state's general permit that encourages living shorelines (section 28.2-104.1 of the Virginia Code). Low-interest loans could be a valuable incentive for encouraging local governments, applicants for wetlands permits and contractors to use living shorelines approaches where they are appropriate. No response needed.

- (1) We understand that in the draft guidelines, under "Allowable Loan Amount," the minimum loan amount is \$100,000. We urge you to clarify that this minimum applies to the loans to local governments, not to loans to individuals that a local government might make. A. We have added a sentence that makes this clarification.
- (2) We urge you to include in the marketing plans required of local governments, direct outreach to wetland contractors, information describing the availability and terms of the loans and the value of living shoreline approaches. As I have explained above, many contractors are unfamiliar with these approaches and the state incentives. A. We have added that suggestion to the Marketing Strategy section of the Local Plan Guidelines.

As requested, language has been added to the Guidelines to clarify the minimum size of the loans and to suggest outreach to wetland contractors in the marketing section of the Local Plan Guidelines.

Comments on the Proposed 9VAC25-210 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

**1. Traditional wetlands/streams/open water provisions:**

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar's office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the 'Changes made since the proposed stage' section of this form. No public comments were received about consistency in this regulation.

The following amendment was made based on Department staff review of the Proposed regulation: The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word 'united' to 'unified'.

Administrative continuance of permits

All comments pertaining to the administrative continuance of permits in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Replace 'may be administratively continued' with 'will be administratively continued' to provide permittee with assurance that they will not be held in abeyance if DEQ does not act in a timely manner. 75-day period for timely application was eliminated - VDOT prefers 40 days for VDOT and 60 days for everyone else.	The Department recommends that an amendment be made to 9VAC25-210-65 to replace 'may' with 'shall' and to add a clarifying statement to complete the first sentence of subsection B. The Department does not recommend amending the amount of days for a timely application as this is consistent with the amount of time necessary for application evaluation in many cases, especially at the end of the typical permit term of 15 years. The Department is proposing the administrative continuance provision as it is afforded this authority from the Code, albeit the provision has gone missing from the regulations in previous amendment cycles. Similar language is contained in the Virginia Pollutant Discharge Elimination System regulations.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. Provisions...generally allow DEQ to administratively continue any permit which expired at the end of the 15 year term without DEQ having been able to finalize a new permit. Net effect of changes is to reduce DEQ's current opportunities to assess project compliance and urge completion; and reduce frequency of updating permit requirements...over long term will weaken the protections provided by Virginia's wetlands program.	The Department recommends that an amendment be made to 9VAC25-210-65 to replace 'may' with 'shall' and add a clarifying statement to complete the first sentence of subsection B. The Department is proposing the administrative continuance provision as it is afforded this authority from the Code, albeit the provision has gone missing from the regulations in previous amendment cycles. Similar language is contained in the Virginia Pollutant Discharge Elimination System regulations.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support addition of administrative continuance	The Department thanks you for your support.

Comments on application requirements

All comments pertaining to application requirements in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Support this section [on functional assessment] as written	The Department thanks you for your support.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is not new, but rather was moved from 9VAC25-210-115 C to -210-80 B 1 g and -210-360 3 c. There is no intent for the Department to apply the provision differently due to its movement in the regulation.

Commenter	Comment	Agency response
Virginia Department of Transportation	Delete last portion of last sentence 'shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.' - concerned that this could allow deq staff latitude to change applicants unwarranted additional permit fees.	The Department does not recommend deleting the referenced phrase, as withdrawal of an application renders that application null and void, and resubmittal of a new application - of similar content or not - requires a new permit application fee in the amount detailed in 9VAC25-20. The proposal is consistent with existing language in the VWP general permit regulations. There is no intent to change the procedures used to determine permit applications fees in accordance with 9VAC25-20 until such time that the program may desire to initiate a regulatory action to revise said regulation.
Virginia Department of Transportation	Keep 'if available' after existing and proposed topographic or bathymetric contours. This information is not always available or necessary.	The Department does not recommend inserting 'if available' back into the reference about 'existing and proposed topographic or bathymetric contours'. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Keep 'for unavoidable permanent impacts to wetlands' so it is clear that compensation is not required for temporary impacts.	The Department does not recommend reinserting this phrase for clarification. A compensatory mitigation plan should not be needed if an impact meets the definition of temporary impacts, as these should already be restored to previous condition without further agency approval, with the exception of when the impact is not identified prior to occurring or where restoration is required as part of an enforcement action.
Virginia Department of Transportation	Remove ebb and flood or direction of flow if applicable. Cannot be represented in a two-dimensional cross-section. Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of VDOT's right of way.	The Department does not recommend revising the ebb and flood or thalweg language in 9VAC25-210-80 B 1 j. Providing the flow direction with graphic arrows or with text is acceptable. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate response to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.
Townes Engineering	The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."	The Department does not recommend revising the thalweg language in 9VAC25-210-80 B 1 j. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that high flows can pose a challenge, but typically these are a temporary challenge. The Department does not believe there is a need for any specifically-licensed or -educated individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.
Virginia Department of Transportation	Make this requirement for protective mechanisms a specific permit condition and delete from regulation. Protective mechanisms should not need to be addressed to this level as part of the application process.	The Department does not recommend deleting the requirement in regulation to provide a mechanism of protection in perpetuity as part of an application or compensation plan. This requirement is not a new requirement but has been relocated in the regulation text. This requirement only applies for permittee-responsible compensation and is an integral part of the conceptual compensation plan for unavoidable impacts at the application stage so that the Department can determine if the proposed compensation is viable. Later in the permitting stage, the permittee works to finalize the protective mechanism as part of the final compensation plan.
Virginia Department of Transportation	Delete, state water control law appears to require deq to provide information for downstream riparian landowners and not authorize deq to delegate this task to applicant	The Department recommends removing the provision requesting riparian property owner information from the list of requirements for a complete application. The Department believes that the Code provides the Board with broad authority to request specific types of information in an application, and is specific as to the role of DEQ in notifying riparian owners and to the role of localities to provide the information if requested; however, the Code appears less specific about who must collect the information in the first place.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining 9VAC25-210-80 B 1 e (5) and (6), and striking the GIS language in 9VAC25-210-80 B 1 h, based on public comment and the assessment of economic impacts.
Virginia Transportation Construction Alliance	Proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.	The Department recommends replacing the GIS shapefile with a map for the required information by combining 9VAC25-210-80 B 1 e (5) and (6), and striking the GIS language in 9VAC25-210-80 B 1 h, based on public comment and the assessment of economic impacts.

Comments on compensatory mitigation

All comments pertaining to compensatory mitigation in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Consider keeping original language as VDOT needs to fully utilize capacity of its multi-project sites in future	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Chesapeake Bay Foundation	Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis	The Department thanks you for your support.

Commenter	Comment	Agency response
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Dominion Resources Services, Inc.	Support [these] provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Supports changes to the mitigation hierarchy	The Department thanks you for your support.

Comments on definitions related to activities in surface waters

All comments pertaining to definitions as specified and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	<p><b>Construction Site:</b> new definition may cause need to identify staging, borrow, and disposal areas for contractors...application occurs before these areas identified. Potentially adds further time constraints on project development.</p>	<p>The Department does not recommend amending the definition of Construction site. The Department disagrees that the definition may constrain project development. The 'construction site' definition was moved from original 9VAC25-210-60 A 11 to the definitions section. In its original location, the definition also included 'any other land areas which involve land disturbing excavation activities'. The definition clarifies a new exclusion 9VAC25-210-60 A 7 that was developed using language from original 9VAC25-210-60 A 11 as well. Movement of the definition does not change the intent of the definition or how it is applied.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	<b>Conversion:</b> suggest eliminating reference to aquatic resources. Not our preference to have to mitigate for other aquatic resources, such as open water features that we are not currently required to provide compensation for.	The Department does not recommend amending the definition of conversion. The definition was developed through collaboration with the Citizen Advisory Group based on a suggestion made during that process to clarify differences between permanent and temporary impacts. The definition supports the program's current practices regarding permanent impacts. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address compensation requirements for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	<b>Multi-project mitigation site:</b> definition was deleted but VDOT must still be able to use our multi-use sites for compensation. Keep definition.	The Department does not recommend reinserting a definition for multi-project compensation sites in order to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The definition has no bearing on how these facilities are regulated or managed. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Virginia Department of Transportation	<b>Undesirable plant species:</b> last portion of definition can make it too restrictive, as the original site condition may be undesirable or of lower quality than that which is desired	The Department does not recommend revising the proposed definition as this wording reflects the program's practice on what is considered to be unacceptable or undesirable plant species, particularly in restoring temporary impacts.

Comments on modifications to permits

All comments pertaining to modifications of permits in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Change the amount of time to 15 days instead of 90 days prior to expiration date - it is not often known or clear whether an extension will be needed that far ahead	The Department does not recommend revising the amount of days necessary prior to the expiration of a less-than-15-yr-term individual permit to apply for an extension. Ninety days represents a compromise between the originally suggested 180 days and another suggestion of 30 days made by participants of the Citizens Advisory Group. This timeframe is consistent with current experience in processing requests for minor modifications.

Commenter	Comment	Agency response
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes every effort to respond in a timely manner.
Chesapeake Bay Foundation	Oppose amendment allowing an increase in wetland impacts by a percentage under a minor modification process. The treatment of up to one acre as 'largely insignificant' squarely contradicts Virginia wetland policy and use of the minor modification process avoids public notice and comment.	The Department recommends removing the proposed change of percentage additional impacts under the minor modification process and reverting to the existing limits allowable under a minor modification, as set forth in the current regulation. While the Department believes that this change will result in more program staff time spent on the processing major modifications, we appreciate the public's need to be informed and to participate in the process.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not listed species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department recommends an amendment to Section 180 E 7 b to strike 'proposed' but to also add a statement suggesting that permittee verifies that the project will not impact proposed species or habitat. The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species. Original language containing 'federally listed' was revised and moved from Section 80 B 1 k to Section 80 B 1 l and copied to Section 180 E 7 b and from Section 115 C 2 c (6) to Section 360 3 c (3). In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Miscellaneous comments

All comments pertaining to miscellaneous items in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	All existing language was stricken - was this intentional or an error?	Section 120 has not been proposed for deletion. The Registrar does not print in the Town Hall web site or in the Virginia Register any sections where no edits are proposed.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 55. This section replaces the original Section 90 E 1 and multiple other locations in the regulation where reference is made to the Department requesting additional information. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 55 does not provide any authority to make informational requests beyond that which is already afforded the Department.

## 2. Surface Water Withdrawal Provisions

Below summarizes staff responses, organized by topic, to comments received during the public comment period that pertain to provisions related to surface water withdrawals and to Part V for Surface Water Withdrawals.

### Consolidation of Surface Water Withdrawal Provisions

All comments pertaining to consolidation of withdrawal provisions and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Andrea Wortzel, Mission H20	Mission H20 agrees with the [DEQ's] proposal to separate out the surface water withdrawal permitting provisions from the wetland-related provisions.	Staff appreciates the comment.
Pamela Faggert, Dominion Resources Services, Inc.	We are supportive of the proposed organizational changes to the regulations to clarify and differentiate the water withdrawal permit requirements from those for wetland and stream impact activities.	Staff appreciates the comment.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	VMA supports the administrative changes both to the individual sections and to the separation of the wetland permitting provisions from the surface water withdrawal permitting provisions.	Staff appreciates the comment.

### Beneficial Uses Definition

All comments pertaining to the definition of beneficial use and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Steve Edgemon and Charles Murray, Fairfax Water	The proposed definition of beneficial use in 9 VAC 25-210-10 directly conflicts with the Code of Virginia (see § 62.1-10). The Code of Virginia states the importance of water supply and sets a framework for the effective use of water resources for all beneficial uses, with human use as the highest priority in the ordered hierarchy (§ 62.1-10(b)). We recommend this part of the definition be incorporated into the VWP definition in 9 VAC 25-210-10.	The definition for beneficial uses is repeated several times in the Code of Virginia, with some variations to identify or clarify a use. The Department's proposal is to conform the definition of beneficial use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority.

<p>Kristen Lentz, City of Norfolk</p>	<p>The rules of statutory interpretation require that these two statutory definitions [of beneficial uses found under Sections 62.1-10 and 62.1-44.3 of the Code of Virginia] be read together so as to avoid direct conflict. As such, it is imperative to include this statement [<i>Public water supply uses for human consumption shall be considered the highest priority</i>] in the regulatory definition.</p>	<p>The definition included in the VWP regulations is from Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. The Department believes it is appropriate to use the definition for beneficial uses that is used in the State Water Control Law of the Code of Virginia. The General Assembly has considered the issue several times, most recently after the 2007 VWP amendments and did not make the change (Acts of Assembly, Chapter 659).</p> <p>The implementation of this definition has been recognized by the courts as a balancing process by the Department. These definitions and statutory directives in the State Water Control Law reflect the General Assembly's recognition that the many uses of water may at times be conflicting. The Commonwealth's water policy, as set forth in the Water Control Law, requires the Department to balance existing and proposed uses, with the directive that domestic and other existing beneficial uses shall be considered the highest priority uses (Code § 62.1-44.15:22(A)). In considering a water protection permit, the Department is required to balance the various uses, and the statutory directive that the Board "protect" existing instream beneficial uses must be viewed in this context. That directive requires the Department to exercise its judgment to ensure that such uses be protected, not in an absolute sense and at the cost of rejecting any proposed uses, but within a reasoned perspective in view of competing statutory considerations. (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).</p>
<p>Andrea Wortzel, Mission H20</p>	<p>DEQ is proposing to amend the definition of 'beneficial use' to read as follows: <i>both</i></p>	<p>The Department's proposal is to conform the definition of beneficial</p>

	<p><i>instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife <u>resources and habitat</u>, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. <u>The preservation of instream flows for the purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters.</u> Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply), agricultural uses, electrical power generation, commercial uses, and industrial uses...</i> Because DEQ is adding 'preservation of instream flows' to this definition, at a minimum DEQ should further include documented water rights by grant...and should be included as a beneficial use protected against future withdrawal decisions...Likewise, grandfathered withdrawal are protected by statute...should also be recognized within this definition.</p>	<p>use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. Grandfathered withdrawals are off-stream beneficial uses and are recognized by the definition. Grandfathered withdrawals are off-stream beneficial uses and are already recognized by the definition.</p> <p>We believe it appropriate to use the statutory definition identified above. We do not believe it is appropriate to add this suggested additional language because it is an accepted legal principle that administrative programs do not grant or modify common law water rights. State Water Control Law does not, and could not, authorize the Board to adjudicate any private rights (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).</p>
<p>Robert Steidel, City of Richmond</p>	<p>DEQ is proposing to change the definition of beneficial use to add the underlined language below: <i>'Beneficial use' means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife <u>resources and habitat</u>, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. <u>The preservation of instream flows for the purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters.</u> Offstream beneficial uses include, but are not limited to, domestic uses (including public water supply), agricultural uses, electrical power generation, commercial uses, and industrial uses...</i> As Virginia moves forward to identify and protect both instream uses and withdrawals for beneficial offstream uses, all water rights...should be explicitly recognized, as well as grandfathered withdrawals...DEQ should afford the rights protection as a beneficial use in the VWP surface water withdrawal permitting process...grandfathered withdrawals should be recognized as a beneficial use that should be accounted for in the VWP permitting process.</p>	<p>The Department's proposal is to conform the definition of beneficial use included in the regulation to that used in Section 62.1-44.3 under Chapter 3.1 State Water Control Law, which is the same chapter under which the VWP Permit Program obtains its authority. Grandfathered withdrawals are off-stream beneficial uses and are recognized by the definition.</p> <p>We believe it appropriate to use the statutory definition identified above. We do not believe it is appropriate to add this suggested additional language because administrative programs do not grant or modify common law water rights. State Water Control Law does not, and could not, authorize the Board to adjudicate any private rights (see Supreme Court of Virginia. 270 Va. 423, 447, 621 S.E.2d 78, 91 (2005)).</p>

All comments pertaining to the definition of public water supply safe yield and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Steve Edgemon and Charles Murray, Fairfax Water	The [public water supply] definition used in the proposed regulation is inconsistent with existing Waterworks regulation – definition that is vital to enabling the VDH Office of Drinking Water to fulfill its mission...The proposed definition is a sweeping shift in regulatory practice and a major change in public policy...These [waterworks] systems are authorized by a VDH-issued waterworks permit, the conditions of which could be jeopardized by potential conflicts with DEQ's proposed definition...This lack of clarity and uncertain timing for any changes may pose a significant problem to many existing, expanding, and new Waterworks in Virginia...We suggest DEQ delete the proposed definition...from the regulation and leave the existing definition..in the Waterworks Regulations.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. The State Water Control Board began publishing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Craig Rice, Metropolitan Washington Council of Governments (COG)	The proposed 'safe yield' definition is inconsistent with existing Waterworks Regulation (12 VAC 5-590-830)...[VDH] permit conditions for communities and utilities...could be put at risk, creating an unknown economic impact.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield

		determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Kristen Lentz, City of Norfolk	The purpose of the safe yield determination...is to ensure that the sources of water for a waterworks system can provide sufficient water to meet the demonstrated need of the system to supply water to its customers...This analysis has nothing to do with water resource protection, but only with reliability of the waterworks system...DEQ's role with respect to safe yield calculations...is limited in scope to an evaluation (in cooperation with VDH) of the capability of the system to provide adequate water...recognized that DEQ has the separate authority to issue regulations that are protective of water resources...by including the term 'safe yield' in the VWP permit regulation, it confuses this authority with the more limited authority it is granted to consult on issuance of VDH permits...Given the great confusion caused by the use of the term 'safe yield' by the two agencies [DEQ and VDH] in separate but related contexts, the term...should be removed from the proposed regulation. If DEQ and VDH wish to clarify DEQ's role in connection with VDH's safe yield determination, this should be addressed in VDH's waterworks regulation.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Kristen Lentz, City of Norfolk	...in the VDH context, as historically referenced in its waterworks regulation and permits issued there under, safe yield describes the source capacity of a public water supply system. It is separate and distinct from, and particularly in the case of conjunctive use systems that utilize multiple surface water and groundwater sources, broader than the safe yield concept as defined and utilized in the proposed DEQ regulation.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a

		<p>new drought of record, and DEQ continues to perform this role to this day.</p> <p>While some systems may be excluded from VWP permitting, the methodology of calculating a complex system using multiple sources can be and has been done before by the agency. DEQ has, since 1985, evaluated the water available to a given water system from multiple sources of supply, including for conjunctive systems.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>DEQ's appropriation of the term [safe yield] and application in the VWP surface water withdrawal regulation removes it from the context of the reliability of a waterworks system...Applying the term outside of that context creates confusion and adds another layer to the water withdrawal permitting program for non-waterworks systems...makes it a tool of environmental protection rather than...for the protection of public health...Changing the focus from human health to the environment makes is unclear what the term will mean or how it will be evaluated in the VDH waterworks permitting process.</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>...unclear how and when the safe yield calculation will apply to grandfathered withdrawals.</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local</p>

		<p>water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>...there is no clear understanding of how and whether the term 'safe yield' will continue to be used in the VDH waterworks permitting context...If the term is going to continue to be used by VDH, but with a new definition, there is uncertainty about the impact this will have on the VDH permitting program.</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Scott Dewhirst, City of Newport News</p>	<p>The DEQ definition [of safe yield] does not account for safe yield as it is applied to more complex water systems like Newport News Waterworks...the DEQ definition seems to only apply to simple single source withdrawals...</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water</p>

		<p>systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p> <p>The methodology of calculating a complex system using multiple sources can be and has been done before by the agency. DEQ has, since 1985, evaluated the water available to a given water system from multiple sources of supply, including for conjunctive systems.</p>
<p>Scott Dewhirst, City of Newport News</p>	<p>We need a better understanding of how VDH might use DEQ's determination of an individual water supply's safe yield will be translated to a system's safe yield and thus the systems' ability to meet customer demands during the most limiting water supply conditions... We believe that removing the determination of 'safe yield' from the VDH regulations without some understanding of how their regulations will be applied leaves us wondering how we might fully assess the impact of the changes.</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Pamela Faggert, Dominion Resources Services, Inc.</p>	<p>We support the clarification of the term 'public water supply safe yield' to clarify that the term...applies only to drinking water suppliers and not industrial permit holders. We request that 'public water supply' be added to the term 'safe yield' throughout Part V....</p>	<p>The Department revised the regulatory language under Part V where instances of "safe yield" appear to add "public water supply" to identify that the term applies to public water supply projects. These changes were limited to the project alternatives section under 9VAC25-210-360.</p>
<p>Robert Steidel, City of</p>	<p>Removing the term [safe yield] from the context of the reliability of a waterworks</p>	<p>This definition will be removed from the final amendments of this</p>

Richmond	system and placing it in the water withdrawal permitting provision might create the impression that safe yield is now a limit on the amount of water that may be withdrawn based only on environmental conditions...term historically has represented the amount that can be withdrawn safely during a drought condition...the proposed 'transfer'...has caused significant confusion about how the term would be used in the future.	particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Robert Steidel, City of Richmond	...the City is also concerned about the implications of moving the safe yield calculation to DEQ...If a requirement to provide a safe yield calculation continues to exist in the VDH waterworks regulation, but safe yield is defined and calculated by DEQ in the water withdrawal program, the impression will be that DEQ will in effect be regulating grandfathered withdrawals.	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.
Robert Steidel, City of Richmond	...the City suggests that DEQ delay the substantive changes [regarding safe yield]...so that the proposed changes can be reviewed in conjunction with the expected and	This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department

	<p>announced regulatory changes to the VDH waterworks regulation...requests that the definition...not be included in VWP regulation...or that a decision on changes to the definition and location of the term be deferred for further discussion.</p>	<p>agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Dean Dickey, Virginia Water and Waste Authorities Association (VWWAA)</p>	<p>VWWAA's biggest concern with the VWP Regulation proposal is its potential to impact grandfathered water rights by its move of the definition of 'safe yield' from the [VDH] Regulations to the VWP Regulation...The purpose of the safe yield definition is to ensure an adequate quantity of water is available...DEQ wants to move this definition into the VWP Regulation and include it as part of setting of instream flow conditions....</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
<p>Dean Dickey, Virginia Water and Waste Authorities Association (VWWAA)</p>	<p>VWWAA requests that the proposed definition of 'safe yield' not be included in the VWP Regulation and that VDH remain the primary agency that determines the safe yield number.</p>	<p>This definition will be removed from the final amendments of this particular regulatory action. This does not mean that the Department agrees with the comments asserting that we have no authority in the</p>

		<p>determination of safe yield for public water supplies or the sustainable yield from a water source. There is ample historic precedent of a robust role by the Department including the development and publication of safe yields for excluded and non-excluded systems pre-dating the VWP regulation. DEQ is responsible for evaluating, in cooperation with VDH and local water supply managers, the current and future capability of public water systems to provide adequate water during critical periods, otherwise known as the safe yield of the system. The State Water Control Board began issuing safe yield determinations in March 1985, these were re-issued in 2005 after a new drought of record, and DEQ continues to perform this role to this day.</p>
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Effect of “Public Water Supply Safe Yield” Definition on Grandfathered Water Withdrawals

All comments pertaining to the affect of amendments on grandfathered water withdrawals and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Steve Edgemon and Charles Murray, Fairfax Water</p>	<p>By eliminating the definition of safe yield from the Waterworks [Regulation]...and replacing it with a new definition, all Waterworks permits in Virginia are impacted by the proposed definition...even if they are grandfathered in VWP regulation...The Commonwealth should consider developing a list of water systems and manufacturing facilities that would be affected if current grandfathered water-withdrawal rights granted within the Virginia Code were to be altered or denied.</p>	<p>Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. A safe yield included in a VDH permit is not an authorization, guarantee, or right to a specified amount of water from a water body. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as “water rights.”</p> <p>The Department believes the definition of public water supply</p>

		safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Craig Rice, Metropolitan Washington Council of Governments (COG)	...a new [safe yield] definition could create a situation where grandfathered water-withdrawal rights granted within the Virginia Code may be altered or denied.	<p>Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as “water rights.”</p> <p>The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.</p>
Dean Dickey, Virginia Water and Waste Authorities Association (VWWAA)	VWWAA is concerned that DEQ could use this provision [safe yield] to limit grandfathered withdrawals through the setting of a safe yield by DEQ that is lower than the grandfathered withdrawal amounts...we could support clarifying language that expressly states that DEQ’s safe yield determination should not limit any grandfathered water rights.	<p>Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as “water rights.”</p>

		The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Scott Dewhirst, City of Newport News	We are concerned that a move of defining safe yield to DEQ from VDH could create a lever for limiting withdrawal of grandfathered systems.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted. It is a misnomer to characterize them as "water rights."  The Department believes the definition of public water supply safe yield does not and cannot impact water rights because water rights may not be determined through an administrative or permitting process.
Thomas Leahy, City of Virginia Beach	Virginia Beach joins with Norfolk in opposing any new regulations that would encroach on to this [grandfathered withdrawal] statutory exemption, or decrease the rated safe yield of either system.	Section 62.1-44.15:22.B of the Code of Virginia excludes from permitting requirements any water withdrawal in existence on July 1, 1989. A change to the exclusion status of this set of water users cannot be made without a statutory change, which is not a proposal put forth by the Department. In addition, the exclusion from permitting requirements does not grant a water right to those users. A safe yield determination or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled.
Andrea Wortzel and Brooks Smith, Troutman Sanders for	VMA supports the statutory exemption expressed in Va. Code § 62.1-246 for the grandfathered surface water withdrawals, and appreciates DEQ's explicit recognition of the protection afforded to such withdrawals in the	Staff appreciates the comment.

Virginia Manufacturers Association (VMA)	Agency Background Document.	
Pamela Faggert, Dominion Resources Services, Inc.	Virginia Code § 62.1-44.15:22 specifies that VWP permits are not required for water withdrawals established before July 1, 1989...we support the retention of the unchanged regulatory language in 9 VAC 25-210-310.	Staff appreciates the comment.

Variance Definition

One comment received pertaining to the definition of a variance and staff response is listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Pamela Faggert, Dominion Resources Services, Inc.	We request removal of 'during a drought' in the definition of variance...would provide flexibility to address non-drought emergencies.	<p>The conditions under which a variance may be granted from a permit condition for a surface water withdrawal is identified in 9VAC25-210-390. This section explicitly states that relief from any condition of a VWP permit may only be granted during a drought. Therefore, removing the phrase "during a drought" from the definition of "variance" does not enable the Department to grant a variance during non-drought events under that section of regulation.</p> <p>The Department appreciates the underlying concern that the regulations do not provide a process for a permittee to seek relief from a permit condition outside of drought events. The variance action was created to enable the Department to grant a permittee relief during a drought, but only once the permittee has taken steps to avoid need of a variance through implementing conservation measures. This requirement was established by the 2003 Acts of Assembly (Chapter 399) and the 2007 Acts of Assembly (Chapter 659), which established that alterations to permit conditions during drought must meet certain conditions. Development of a process to address non-drought events would necessitate revising the regulation to broaden the applicability of a variance beyond what was originally contemplated, which the Department considers a substantive change to the intent of a variance. The Department believes relief from</p>

		<p>permit conditions during non-drought events is best addressed through a condition of the permit to enable such condition to be project specific, such as ability to immediately cease releases from a reservoir to aid in search and rescue efforts for a missing person in areas downstream of such a facility.</p>
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Permit Exclusions

One comment pertaining permit exclusions and staff responses is listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Scott Dewhirst, City of Newport News</p>	<p>...we noticed under Section 9 VAC 25-210-310.A.3.a, withdrawals initiated between July 1, 1989 and July 1, 2007 would be limited to the highest withdrawal during a 12-consecutive month period during the 10 years prior to July 25, 2007...it gives us concern that there might not be a good understanding of how a more complex water supply system works and further concerns us that such a limitation may eventually be applied to 'grandfathered' systems...We strongly believe that historical withdrawals should not be used to set a permit limit. It is likely that a situation requiring higher withdrawals will occur in the future...The established installed capacity should be the limiting factor in setting withdrawal limits.</p>	<p>The exclusion provision that pertains to withdrawals initiated after July 1, 1989, and before July 1, 2007, remains unchanged in the proposed regulation. The only revisions to this section (9VAC25-210-310.A.2) are to clarify existing language and remove sunset provisions that have passed. The exclusion requirements that pertain to any existing lawful unpermitted surface water withdrawal initiated after July 1, 1989 and before July 1, 2007, establishes a limit for which that withdrawal is excluded from VWP permitting requirements. This provision only applies to those unpermitted withdrawals that needed a permit after the inception of the program in 1989 but before the 2007 amendments. The limit is based upon the largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007, which is the effective date of the regulation in which the provision was adopted. Establishing an initial permit or excluded volume based upon historical use has been the Department's practice for multiple decades in its water withdrawal programs. During the 2007 amendments, it was agreed that a limit established using the historical volume from the preceding 10 year timeframe, which encompassed the drought of record for the majority of the Commonwealth, represents a volume at which the excluded user may reasonably expect to continue their established operations. This action followed past precedent used by the Department in the</p>

		Groundwater Withdrawal Permit Program. However, should the user modify their operations such that an increase in withdrawal above the excluded limit is needed, the user may request a higher volume through submittal of an application for a VWP permit.
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Coordinated Review

All comments pertaining to coordinated review and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Andrea Wortzel, Mission H20	Proposed Section 9 VAC 25-210-[330] provides for the coordinated review with the Virginia Marine Resources Commission for surface water withdrawals. For public water supply withdrawals, coordination with VDH should also be referenced.	<p>The Department does coordinate with VDH on every VWP permit application in accordance with Section 62.1-44.15:20 of the Code of Virginia, which requires the Department to consult with and give full consideration to the written comments of state agencies, including VDH. The Department believes that this level of coordination is what is authorized at this time.</p> <p>The intent of 9VAC25-210-330 is to provide a process to carry out the statutory requirement of Section 62.1-44.15:5.01 of the Code of Virginia (2005 Acts of Assembly, Chapter 49). The statute requires DEQ coordinate with VMRC during the review of an application for a surface water withdrawal when both agencies' review the same application under their respective permitting program. This coordination is intended to ensure consistency, prevent conflicting requirements from state agencies, and inform the public of both agencies' review. This requirement solely addresses VMRC and DEQ.</p>
Robert Steidel, City of Richmond	...the City believes that the proposed Section 9 VAC 25-210-[330] be modified to require that applications for public water supply withdrawals be reviewed and coordinated with VDH.	<p>The Department does coordinate with VDH on every VWP permit application in accordance with Section 62.1-44.15:20 of the Code of Virginia, which requires the Department to consult with and give full consideration to the written comments of state agencies, including VDH. The Department believes that this level of coordination is what is authorized at this time.</p> <p>The intent of 9VAC25-210-330 is to provide a process to carry out the</p>

		<p>statutory requirement of Section 62.1-44.15:5.01 of the Code of Virginia (2005 Acts of Assembly, Chapter 49). The statute requires DEQ coordinate with VMRC during the review of an application for a surface water withdrawal when both agencies' review the same application under their respective permitting program. This coordination is intended to ensure consistency, prevent conflicting requirements from state agencies, and inform the public of both agencies' review. This requirement solely addresses VMRC and DEQ.</p>
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Evaluation of Project Alternatives

All comments pertaining to the evaluation of project alternatives and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Andrea Wortzel, Mission H20</p>	<p>It is unclear whether proposed 9 VAC 25-210-360 applies to all water withdrawals or only to public water supply withdrawals...unclear how...text relating to 'local water supply need' applies in the context of a withdrawal by an industrial or agricultural users...Many of the other provisions in this section would appear inapplicable to private withdrawers.</p>	<p>The informational requirements under 9VAC25-210-360.A applies to all surface water withdrawals, with the possible exception of two items that pertain to projected demand contained in a local or regional water supply plan and population growth trends.</p> <p>In response to comments, the Department revised "local water supply need" to "need for water to meet the project purpose" under 9VAC25-210-360.A to provide clarity to this section. Additionally, "if applicable" was included at the end of the sentences under 9VAC25-210-360.A.2.a and b.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>Such a general statement [in 9 VAC 25-210-360.A.4] does not provide sufficient guidance to private withdrawers as to the level and components of the required alternatives analysis. Clarification is needed about the demonstration of need required for industrial and agricultural water users.</p>	<p>In response to comments, the Department revised the regulatory language to specifically identify the applicable provisions.</p>
<p>Pamela Faggert, Dominion Resources Services, Inc.</p>	<p>The proposal includes the language that an applicant for a water withdrawal permit must demonstrate that the project meets a 'local water supply need'...could imply that a project must be associated with public water supplies or be identified in the state or local water supply plans. We request clarifying language be added to address this potential misinterpretation. Potential language could be replace 'local water supply need' with need of water to meet the project purpose.'</p>	<p>The informational requirements under 9VAC25-210-360.A applies to all surface water withdrawals, with the possible exception of two items that pertain to projected demand contained in a local or regional water supply plan and population growth trends.</p> <p>In response to comments, the Department revised "local water supply need" to "need of water to meet the project purpose" under</p>

		9VAC25-210-360.A to provide clarity to this section.
Pamela Faggert, Dominion Resources Services, Inc.	Provision 9 VAC 25-210-360.2 requires two pieces of information that will not apply to all water withdrawals...we request including the term 'if applicable' [to subsections (a) and (b)].	In response to comments, "if applicable" was included at the end of the sentences under 9VAC25-210-360.A.2.a and b.
Pamela Faggert, Dominion Resources Services, Inc.	The regulation should identify the subsections in 9 VAC 25-210-360.3 that will not apply to water withdrawals that are not public water supplies....	In response to comments, the Department revised the regulatory language to specifically identify the applicable provisions.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	VMA requests that DEQ revise proposed 9 VAC 25-210-360 to clarify that non-public water supply withdrawal projects do not need to demonstrate that the project meets a local water supply need.	In response to comments, the Department revised "local water supply need" to "need for water to meet the project purpose" under 9VAC25-210-360.A to provide clarity to this section.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	...the evaluations of projects alternatives section in Proposed 9 VAC 25-210-360 includes a vague requirement that alternatives analysis for surface water withdrawals other than for public water supply 'shall include all applicable items included in this subdivision 3 of this section,' which is the section applicable to public water supply alternatives analyses...a more appropriate approach would be for DEQ to identify and articulate in subsection 4 which alternatives analysis requirements apply to non-public water supply withdrawers.	In response to comments, the Department revised the regulatory language to specifically identify the applicable provisions.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	In order to add additional clarity to this portion of the regulations, DEQ should revise Proposed 9 VAC 25-210-360.1.b to read 'The public water supply safe yield and lowest daily flow of record' and likewise with 9 VAC 25-210-360.3.c.5, which should be revised to read 'Evaluation of alternative public water supply safe yields.'	In response to comments, the Department revised the regulatory language under Part V where instances of "safe yield" appear to add "public water supply" to identify that the term applies to public water supply projects. These changes were limited to the project alternatives section under 9VAC25-210-360.

Permit Modifications

All comments pertaining to permit modifications and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Steve Edgemon, Fairfax Water	...changes that trigger the need for a permit modification...are highly subjective in nature. Of particular concern is need for a permit modification for changes in "operational" permit requirements. It is unclear whether mere changes to intake screens, pump operations and other operation and	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are

	<p>maintenance activities would necessitate a VWP permit modification.</p>	<p>operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff.</p>
<p>Craig Rice, Metropolitan Washington Council of Governments (COG)</p>	<p>The proposed new section on permit modifications for surface water withdrawal permits...creates uncertainty about whether relatively minor operational or administrative activities might trigger the need for a VWP permit modification.</p>	<p>The Department believes that greater uncertainty exists today and will continue without the proposed change. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff. Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>The terms used to describe the [modification] changes [for surface water withdrawals] are subjective in nature...As drafted, the provision creates a situation where permitted</p>	<p>The Department believes that greater subjectivity exists today and will continue without the proposed change. Currently, the regulations</p>

	<p>withdrawer would need to consult with DEQ before making any changes to ensure that a formal modification is not needed.</p>	<p>are silent as to the changes specific to surface water withdrawal activities that may be considered under a minor modification and only provide one generic provision for change under a major modification. This results in uncertainty for permittees, the public, and staff as to the type of changes specific to withdrawals that may be appropriate under a minor modification versus a major modification of the permit. As part of the reorganization of the regulation, the Department included a section under the new Part V that establishes criteria, which is consistent with DEQ's other permitting programs, for when minor and major modifications of the permit may occur that are specific to surface water withdrawal activities.</p> <p>The criteria are based upon staff's experience modifying permits to incorporate changes requested following permit issuance. Some subjectivity is inherent in the process as the case by case review of any modification relates to a particular withdrawal and its unique set of impacts. Criteria were developed to strike a balance between broadness and specificity to best cover a variety of potential changes that may occur after permit issuance. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff regarding the possible changes that may be considered under either a major or minor modification of a VWP permit for surface water withdrawals.</p>
<p>Andrea Wortzel, Mission H20</p>	<p>A change in the type of [water] use should not necessitate a major permit modification unless the new use results in greater consumptive use of the resource.</p>	<p>The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available</p>

		<p>project alternatives may differ based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. However, the Department appreciates the concern voiced and recognizes that older VWP permits do not have the withdrawal's authorized use clearly identified as a condition in the permit. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.</p>
<p>Andrea Wortzel, Mission H2O</p>	<p>It is unclear whether mere changes to intake screens, pump operations and other maintenance would necessitate a minor modification. This lack of clarity creates confusion...Requiring a permit modification for changes that are operational or administrative in nature would be unduly burdensome.</p>	<p>Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or increase the impact to instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may affect water resources. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.</p>
<p>Andrea Wortzel, Mission H2O</p>	<p>The timing and approval process that applies to both major and minor modifications is unclear.</p>	<p>As standard for other DEQ permitting programs for individual permits, timeframes to process a modification is not laid out in regulations but may be addressed in guidance. This is due to the variability in the type of requests</p>

		received and the different levels of due diligence necessary by the Department to conduct an adequate review. However, the major modification process is clarified for the VWP Permit Program under 9VAC25-210-180.C.
Andrea Wortzel, Mission H20	If the purpose of the separation [consolidation of surface water withdrawal provisions under Part V] is to make the applicable requirements more clear, this [modification] section should constitute a stand-alone provision governing modification to surface water withdrawal permits.	The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity. The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180.
Andrea Wortzel, Mission H20	The new surface water withdrawal section does not address the transfer of permits. Such provisions should be included in the event of a change in ownership.	The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.
Pamela Faggert, Dominion Resources Services, Inc.	We request that the phrase 'including increasing the storage capacity for the surface water withdrawal' be removed from 9 VAC 25-210-380.3. In some cases increasing storage capacity will not increase the maximum withdrawal rate or volume...Increasing storage capacity should not be a default trigger for a major modification.	The regulatory language was revised under 9VAC25-210-380.B.3 in response to the comment.
Pamela Faggert, Dominion Resources Services, Inc.	Provision 9 VAC 25-210-380.4 requires a major modification for new uses or modifications of existing uses where the new or modified use is no longer consistent with what was presented in the permit application or in the permit conditions...To clarify that the intent is to capture major changes in water use type we request that the provision include examples of water use types including public water supply, irrigation, electricity generation and others as appropriate.	In response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia	The proposed changes do not include a permit transfer provision for surface water withdrawal permit. Such a provision should be provided.	The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.

Manufacturers Association (VMA)		
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	DEQ should clarify the VWP permit modification process in the final regulation.	The major modification process is clarified for the VWP Permit Program under 9VAC25-210-180.C.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	Proposed Section 9 VAC 25-210-380 incorporates by reference the requirements for a modification via the wetlands provisions in 9 VAC 25-210-180. This creates confusion and appears inconsistent with the purpose of separating out surface water withdrawal provisions in the revised regulations.	The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface water withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity. The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	...the language regarding minor modifications is unclear, and suggests that some traditional administrative and maintenance work associated with surface water withdrawals would now be subject to a DEQ approval process.	Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or affect water resources under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may affect water resources. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally, a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.

<p>Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)</p>	<p>...changes in the major modification sections state that a change in the use of the water requires a major modification. Given that there is no explicit permit transfer provision, it is unclear whether 9 VAC 25-210-380.A.4 is meant to serve that purpose. Additional clarification of this section is needed.</p>	<p>The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available project alternatives may differ based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. However, the Department appreciates the concern voiced and recognizes that older VWP permits do not have the withdrawal's authorized use clearly identified as a condition in the permit. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.</p> <p>The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.</p>
<p>Robert Steidel, City of Richmond</p>	<p>The proposed permit modification section (9 VAC 25-210-90) is confusing for two reasons...cross-references the permit modification process for wetland permits...clearer if located in one place...[and] criteria for major and minor modifications are vague....</p>	<p>The consolidation of the surface water withdrawal provisions under Part V was designed to house all surface withdrawal related provisions in one location to provide clarity to the provisions that apply specifically to that type of activity. The intent outlined by the NOIRA was not to duplicate the entire VWP Permit Program regulation in addition to those activity specific provisions under Part V. Doing so would create more confusion and</p>

		<p>give the appearance there are two separate programs. Linkages between the two sections are clearly provided within the relevant sections to assist the reader. Modifications to permits not specific to surface water withdrawals, such as the transfer of permits, are addressed under 9VAC25-210-180.</p> <p>The criteria are based upon staff's experience modifying permits to incorporate changes requested following permit issuance. Some subjectivity is inherent in the process as the case by case review of any modification relates to a particular withdrawal and its unique set of impacts. Criteria were developed to strike a balance between broadness and specificity to best cover a variety of potential changes that may occur after permit issuance. The Department believes the new section provides clarity and certainty that was previously unavailable to permittees and staff regarding the possible changes that may be considered under either a major or minor modification of a VWP permit for surface water withdrawals.</p>
<p>Robert Steidel, City of Richmond</p>	<p>...proposed 9 VAC 25-210-380.A.4 would require a major permit modification for new uses of the withdrawn water not identified in the permit application. As written, would the section require a public water supplier to obtain a major modification...prior to arranging to sell water to a new industry...? Or, is the proposed section really aimed more at addressing the transfer o[f] water withdrawal permits....</p>	<p>The intent of this criterion is to address situations when the basis upon which the permit was issued is altered. This is most likely to occur during a transfer of permits. A change in use type results in a different project purpose and a different methodology for determining need and projecting water demand because these items are use type specific. For instance, the project purpose, water need and demand projection for public water supply differs than that for electrical generation or for golf course irrigation. Furthermore, available project alternatives may differ based upon the use type. Therefore, this type of change necessitates a reevaluation of the authorized activity. Examples of such primary uses would be agricultural irrigation, golf course irrigation, public water supply, manufacturing, electricity generation, etc. The type of primary use for which a permitted withdrawal is authorized, and</p>

		<p>therefore a change in that use would result in a modification, is clearly identified as a condition in VWP permits issued in the last five years. Public water supplies by their nature serve a diverse set of uses and it is not the intent to address normal changes in the service area use base of a public water supply. Therefore, in response to the comment, the regulatory language was revised under 9VAC25-210-380.A.4 to include some examples of use types.</p> <p>The transfer of a permit from an existing permittee to a new permittee is addressed under 9VAC25-210-180.E.4 of the VWP regulation.</p>
Robert Steidel, City of Richmond	<p>...proposed regulation requires approval of a minor permit modification for 'minor' changes to operational permit requirements...would appear to create a requirement for operators to obtain DEQ approval before undertaking basic operational and administrative changes...DEQ approval for such minor changes should not be required, particularly where such changes have no adverse impacts on the volume of water withdrawn.</p>	<p>Modifications to a VWP permit are limited to changes in activities that necessitate a revised permit condition or negatively affect instream flow under the jurisdiction of the VWP Permit Program. Therefore, changes that are operational or administrative in nature only trigger a permit modification if the change is to an aspect of the project that is covered by a condition of the permit or may negatively affect instream flow. For instance, if a permitted project has a permit condition that pertains to intake screens, any change to the intake screens that do not comply with the permit require a permit modification. Additionally a permit modification may be necessary to address any change to a plan required by the permit, such as a water conservation plan or withdrawal operations plan, which alters the requirements for the plan as set forth in the permit.</p>

Administrative Continuance

All comments pertaining to administrative continuance and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Andrea Wortzel, Mission H2O	<p>The proposed regulation includes a specific time period of 270 days for applying to renew a surface water withdrawal permit...seems unduly lengthy...should be 180 days...consistent with the renewal application process for [VPDES] permits.</p>	<p>The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort</p>

		<p>required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.</p>
<p>Pamela Faggert, Dominion Resources Services, Inc.</p>	<p>As proposed, the timeframe for applying for a permit reissuance for water withdrawals will increase from the standard 180 days to 270 days...Given that the proposed revisions will allow administrative continuances of expiring permits (9 VAC 25-210-65), the standard 180 day time period for reapplication is adequate. To the extent the proposal remains unchanged...request that a statement be added clarifying that this requirement only applies to permits issued after the effective date of the regulation.</p>	<p>The 270 day deadline is necessary as the VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.</p> <p>The Department does not believe further clarifying language is needed as the provision would only apply to new permits or reissuances that file a complete application after the effective date of the regulation, in accordance with the 9VAC25-210-610, which governs the transition between the current and revised regulation.</p>
<p>Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)</p>	<p>The application renewal period for surface water withdrawals should be consistent with the 180 days used in other DEQ programs such as the VPDES permit program, rather than 270 days as proposed by DEQ.</p>	<p>The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply</p>

		storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.
Robert Steidel, City of Richmond	...the City supports applying for a renewal 180 days in advance [instead of 270 days]. The 180-day timeframe would be consistent with other regulatory timeframes, and would provide sufficient time to evaluate renewal applications.	The 270 day deadline to submit a reissuance application for a VWP permit for a surface water withdrawal was selected to be consistent with the Department's Groundwater Withdrawal Permitting Program (9VAC25-610-96) which has comparable levels of effort required by the Department in review of a permit. VPDES permits are issued every five years which limits the amount of information to be reviewed. The VWP permit is a fifteen year permit and includes projections of information not only for each year of the permit term but also for a 30-50 year period to evaluate the sizing of water supply storage and consistency with local and regional water supply plans. Reviews of withdrawal applications can be lengthy and 180 days is often insufficient time for staff to conduct the review prior to the permit expiration date.

Permit Transition

All comments pertaining to permit transition and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Andrea Wortzel, Mission H20	This section [9VAC25-210-610 that governs transitions] should include a complementary provision that safe yield determinations made prior to the effective date of the regulation, whether by DEQ or VDH, likewise remain in full force and effect until such permits expire or are revoked or terminated.	The Department is unable to bind another agency, such as VDH, through DEQ's regulation. Any regulatory requirement of VDH regarding public water safe yield determinations falls within the regulatory authority of VDH, whose prior permit actions are not impacted by any regulatory change in DEQ's VWP regulation.
Robert Steidel, City of Richmond	The proposed regulation includes a transition provision explaining how the new changes would be implemented...transition provision...should address implementation of this change [safe yield] as well...at a minimum, the regulation should make clear that safe yield determinations made prior to the effective date of the regulation, whether by DEQ or VDH, will remain in full force and effect until such permits later expire or are revoked or terminated.	The Department is unable to bind another agency, such as VDH, through DEQ's regulation. Any regulatory requirement of VDH regarding public water safe yield determinations falls within the regulatory authority of VDH, whose prior permit actions are not impacted by any regulatory change in DEQ's VWP regulation.

General and Over-arching Comments

All general and over-arching comments and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Steve Edgemon and Charles Murray, Fairfax Water	The proposed changes to the regulation and their implications on all water withdrawals in Virginia extend well beyond the nature of the changes that were advertized in the NOIRA. The new regulatory language is better characterized as nearly a complete re-work of the existing regulation, with major substantive changes....DEQ should consider convening a Regulatory Advisory Panel to focus solely on the surface water withdrawal provisions of the regulation.	<p>The Department believes the changes do not go beyond the changes contemplated by the NOIRA. While there was significant reorganization of the regulation very few changes to content have been made.</p> <p>The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions. The Department anticipates the need for future discussion on this topic.</p>
Andrea Wortzel, Mission H2O	Mission H2O respectfully requests that all other substantive changes to the surface water withdrawal provisions be held in abeyance pending the formation of a new [Citizen Advisory Group] to review and discuss the proposed changes.	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions. The Department anticipates the need for future discussion on this topic.
Andrea Wortzel, Mission H2O	...there was inadequate representation of the stakeholders most directly affected by the changes to the surface water withdrawal provisions...The scope of existing and protected water withdrawals, including riparian rights, water rights by grant, and prescriptive water rights, needs to be better understood in the permitting process...before any further regulatory changes occur.	The Department believes there was adequate representation of stakeholders as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector.
Andrea Wortzel, Mission H2O	...some of the changes to the surface water withdrawal provisions [example provided was safe yield]...are related to changes expected to be made to the waterworks permitting provisions of [VDH]. In order to avoid confusion and ensure that the changes are complementary...Holding substantive changes to the DEQ surface water provisions so they	While this suggestion may be the ideal, both regulations are not on the same timeline anymore. The most contentious issue related to removal of the safe yield definition from the VDH regulation and adding it to these VWP amendments is being addressed so that both

	coincide with the VDH waterworks permitting changes enables this to occur.	agencies use a common definition. The Department anticipates the need for future discussion on this topic.
Andrea Wortzel and Brooks Smith, Troutman Sanders for Virginia Manufacturers Association (VMA)	...VMA would support tabling the substantive changes to the surface water withdrawal provisions to allow for greater coordination with these studies [relating to water resource management] and other water supply related discussion.	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions.
Robert Steidel, City of Richmond	The City supports the comment of Mission H2O, and encourages DEQ to table the substantive changes to the VWP surface water withdrawal provisions to enable more dialogue and greater participation in reviewing the proposed changed.	The Department believes the review and discussion was sufficient through the Citizen Advisory Group (CAG) held for the current amendments as the group encompassed representatives for surface water withdrawal projects from the public works sector, industrial sector and agricultural sector and separate meetings were held solely to discuss amendments proposed to surface water withdrawal provisions.
Steve Edgemon and Charles Murray, Fairfax Water	The regulatory tools for addressing conflicts among water users are clearly established in the Code of Virginia (see § 62.1-245). The proposed regulatory changes for surface water withdrawals represent a stark deviation from the intent of the Code...Unless appropriately revised, the proposed regulatory changes by DEQ will undercut the key basic principles upon which communities have planned and invested to meet the water needs of their citizens. These regulatory changes also have the potential to negatively affect manufacturing and economic development in the Commonwealth. The Virginia Department of Planning and Budget Economic Impact Analysis...fails to adequately evaluate the economic impacts of the proposed regulatory changes...we strongly recommend that implementation of any non-emergency regulatory changes be suspended until an economic study of surface water withdrawal regulations is completed and the cumulative impacts are better understood.	<p>The referenced section of the Code (§ 62.1-245) is a part of the Surface Water Management Act and only applies within a designated Surface Water Management Area according to the criteria outlined in statute. No Surface Water Management Areas have been designated to date.</p> <p>The Department makes every effort to pursue regulatory changes that represent the least burdensome to implement and minimize economic impact to the regulated community. Economic impact evaluations are required by the regulations under the Administrative Process Act and are conducted by the Department of Planning and Budget (DPB).</p> <p>The Department believes delaying implementation of the changes is a disservice to the regulated public as the revisions provide greater clarity and accurately portray current policies and practices. In addition, both the House and Senate versions of the 2016 Budget Bill include language requesting JLARC</p>

		<p>shall (i) identify and report a list of the water systems and other water dependent facilities that could be affected by changes, including those that may related to current "grandfathering" provisions, to the state's water protection permit regulations pursuant to 9 VAC 25-210, and (ii) describe the nature and magnitude of the impact on affected water systems and other water dependent facilities.</p>
<p>Craig Rice, Metropolitan Washington Council of Governments (COG)</p>	<p>We are concerned that changes...have the potential to negatively affect the region's economy and infrastructure investments already completed, underway, or planned across the region...the CBPC recommends delaying any non-emergency regulatory changes at this time until after a comprehensive economic analysis is completed.</p>	<p>The Department does not believe existing grandfathered users (withdrawals in existence prior to July 1, 1989) will be impacted by this regulatory change beyond what they are today without a statutory change as these users are not subject to VWP permitting requirements until a new 401 certificate is needed to increase the withdrawal beyond what it was in July 1, 1989. Expanding and new users who are subject to VWP permitting requirements may be affected by this change as these users must comply with existing laws and regulations and the Department may only issue a permit is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.</p> <p>The Department believes delaying implementation of the changes is a disservice to the regulated public as the revisions provide greater clarity and accurately portray current policies and practices. In addition, both the House and Senate versions of the 2016 Budget Bill include language requesting JLARC shall (i) identify and report a list of the water systems and other water dependent facilities that could be affected by changes, including those that may related to current "grandfathering" provisions, to the state's water protection permit regulations pursuant to 9 VAC 25-210, and (ii) describe the nature and magnitude of the impact on affected water systems and other water dependent facilities.</p>
<p>Steve Edgemon and Charles Murray, Fairfax Water</p>	<p>Changes...to withdrawal regulations have the potential to negatively impact the effective management of the Potomac River system...Considerations must be given to the</p>	<p>The proposed changes, including those related to safe yield that are being removed, do not negatively impact the effective management of</p>

	current obligations of water utilities...that are in effect pursuant to binding agreements already undertaken.	the Potomac River. The Commonwealth and the Board are signatories to the Low Flow Allocation Agreement. In this agreement, the Commonwealth reserved the right to use its regulatory authority, as appropriate, to implement effective management of the Potomac River through state law. It also agreed to ensure that this agreement would be implemented through its regulatory programs such as the VWP.
Craig Rice, Metropolitan Washington Council of Governments (COG)	...the [COG's] CBPC [Chesapeake Bay and Water Resources Policy Committee] is concerned that the proposed regulatory changes, such as changing the definition of 'safe yield', may have the potential to destabilize the cooperative regional principles upon which utilities and communities in the Metropolitan Washington Region have planned and invested to meet the water needs of the entire region for more than 35 years.	The proposed changes, including those related to safe yield that are being removed, do not negatively impact the cooperative regional principles used for effective management of the Potomac River. However, these utilities and localities must base their agreements on a firm foundation. A safe yield determination in a VDH permit or reported intake capacity for a waterworks also does not grant a volume of water to which the user is entitled. The existing exclusion from permitting requirements does not grant a water right to those users. The grandfathering provision of the VWP statute simply defines the trigger for an increase in a water withdrawal that would require the withdrawal to be permitted.
Thomas Leahy, City of Virginia Beach	...I share her [Ms. Kristen Lentz, Director of Utilities, City of Norfolk] concerns and support her reasoning. Please consider her comments as if I had co-signed the letter [dated January 28, 2016] with Ms. Lentz.	Please see the Department's responses to comments submitted by the City of Norfolk.

VWP General Permit Regulation - Summary of Comments and Agency Response - 9VAC25-660

Comments on the Proposed 9VAC25-660 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar's office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the 'Changes made since the proposed stage' section of this form. Several public comments were received about consistency in this regulation, as noted below.

The following amendment was made based on Department staff review of the Proposed regulation:

- The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word 'united' to 'unified'.
- The Department clarified the need for a permittee's compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit, by adding one sentence to the end of Section 100, Part I A 1.
- The Department deleted a clause that unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage in Section 27 B.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Request deletion of reference to 9VAC25-230 as it does not pertain to terminations	The Department recommends retaining reference to Procedural Rule No. 1, but amending it to match that which was amended in 9VAC25-210 by changing '9VAC25-230-10 et seq.' to '§ 62.1-44.15:02 of the Code of Virginia'.
Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Comments on general permit term and transition

All comments pertaining to general permit term and transition provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. net effect of changes reduces DEQ's current opportunities to assess project compliance and urge completion, and reduce frequency of updating permit requirements.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department believes that the proposed general permit term does not affect the Department's ability to conduct compliance activities, but may require more careful project planning on the part of permittees.

Commenter	Comment	Agency response
Virginia Department of Transportation	Language drafted during the CAG was removed that would have allowed projects to continue during the transition period between general permits. previous authorizations should be grandfathered. under existing proposal, VDOT and other permittees could be forced to stop work until new authorization granted. concerned that permittee could be found non-compliant while waiting for new authorization.	The Department recommends amending the general permit term to 10 years, rather than the 15 years noted in the Proposed regulations. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. Because the Department is bound by the existing statute and regulation, any general permit coverage action that DEQ has made or will make from 12:00 a.m. on March 11, 2015 through 11:59 p.m. on August 1, 2016 shall not extend authorization beyond 11:59 p.m. on July 31, 2021 – approximately 6 years. Compliance activity conducted by the Department will continue under current procedures until such time that new regulations become effective.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support the 15 year term change and removing the authorization term. However, applicants applying in the late years of the term will have difficulty using a general permit and completing a project under the same terms/conditions. Unduly burdensome requirement - one option may be to include a provision stating reissued gps will be developed at least one year in advance of prior permit's expiration; another option would be to reinstate language allowing terms/conditions to be based on term length and duration of the project so permittee are not forced to choose which permit to apply for.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.
Virginia Transportation Construction Alliance	This paragraph does not allow for permits to be longer than 15 years with the exception of the first year, where each only allows for a the remaining permit term from the year of the permit issuance. Therefore a permit issued in 2030 will only be valid for one year.	The Code of Virginia does not allow a VWP permit term of more than 15 years, regardless of when the permit is issued.

Commenter	Comment	Agency response
Wetland Studies and Solutions and Home Builders Association of Virginia	Development industry supports a specific permit term (certain number of years), duration for general permits. 15 year proposal is good but all expire on same day. Thought previous committee solved problem in 2001 with current structure. Permits expiring all on the same day cause substantial work for everyone. General Attorney opined back then that it was legal, but there is apparently a different opinion now. Confident we can find a legal solution to allow variable expirations. Not a huge issue, but would be relatively easy change to make things better for everybody.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.

Comments on administrative continuance of permits

No comments were received pertaining to general permit administrative continuance in this regulation. The provision for administrative continuance of individual permits (9VAC25-210-65) did not reach consensus during the Citizen Advisory Group process, and the Board directed the Department to highlight this provision in the Proposed public notice and consider adding a timeline on the action. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. The Department's recommendation for amendments to 9VAC25-210 includes replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B. The Department does not recommend a timeline be inserted regarding the amount of days a continuance may last, as this would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. The Department does not recommend any amendments to the language in Section 35 of each general permit regulation.

Comments on application requirements

All comments pertaining to general permit application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Townes Engineering	The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that while upgrading staff's skills may be a necessary cost of doing business, it does not believe there is a need for any specifically-licensed or -degreed individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.

Commenter	Comment	Agency response
	crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."	
Virginia Department of Transportation	Request relief from providing email addresses on applications	The Department continues to recommend maintaining the requirement for email addresses. If this causes VDOT to revise paper forms, electronic forms, and/or database fields, the Department can accept this information as an attachment to an application, or as part of any cover letter or email submitted with an application. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Break out project name and proposed project schedule into separate numbered items, and that proposed project schedule not be required for spreadsheet projects under 50 A 3 b	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again. Regarding the submittal of a project schedule for VDOT spreadsheet projects, the Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Replace 'fourth order subbasin' with 'fourth level or 8-digit hydrologic unit' because NWBD does not have a fourth order subbasin.	The Department does not recommend replacing 'order' with 'level'. The Department recognizes that the National Watershed Boundary Dataset uses the term 'level' instead of 'order'; however, we recommend keeping the same term used in governing Code §62.1-44.15:23.
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.

Commenter	Comment	Agency response
Virginia Department of Transportation	Break out narrative description and project purpose and need into separate items	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again.
Virginia Department of Transportation	Object to requirement for proposed topographic or bathymetric contours on plan view drawings - don't have this information for most projects	The Department recommends maintaining the text as proposed, as contours are typically used and submitted by the majority of applicants. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of dot's right of way.	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to providing wetland impacts with sum converted to acres - do not provide this information in current applications, only provide sq ft	The Department recommends maintaining the text as proposed, as acreage is the default unit typically used and submitted by the majority of applicants and is the designated unit for regulatory limits and thresholds. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is copied to each general permit regulation from the Proposed 9VAC25-210 to ensure consistent requirements for all VWP permits. There is no intent for the Department to apply the provision differently due to its inclusion in the general permit regulations. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects incurring less than 1/10 acre or 300 linear feet of impacts.

Commenter	Comment	Agency response
Virginia Department of Transportation	Replace 'wetland delineation confirmation' with comparable language from B 11 d - don't typically have a written confirmation unless project is a consultant-managed compensation site design	The Department recommends maintaining the text as proposed, as the wetland delineation confirmation is typically submitted by the majority of applicants. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Keep 'in accordance with 9VAC25-20' to clearly reference the permit fees	The Department recommends reinserting this citation.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate response to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.
Virginia Transportation Construction Alliance	...the proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.

Commenter	Comment	Agency response
	obstacle to deeming a permit application complete.	

Comments on compensatory mitigation

All comments pertaining to general permit compensatory mitigation in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis	The Department thanks you for your support.
Dominion Resources Services, Inc.	Support provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.	The Department thanks you for your support.
Virginia Department of Transportation	Object to new language re compensation for open water - unsure of how we would effectively compensate for open water impacts in karst	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less, regardless of their location on the landscape. The Department intends to reduce the potential situations where compensation may be required, particularly under general permit coverage. The Department will continue to evaluate compensation proposals in accordance to regulation and program policy.

Commenter	Comment	Agency response
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Support changes to the mitigation hierarchy	The Department thanks you for your support.
Virginia Transportation Construction Alliance	[Section 70 C] should be deleted or substituted with the following language which is more appropriate language such as: "The proposed compensatory mitigation consists of compensating at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent wetlands."	The Department does not recommend amending Section 70 C regarding compensation. The suggested language means the same as the existing language.
Virginia Transportation Construction Alliance	This provides the opportunity for VDEQ to require compensation for ponds and other open waters, where this has not been the standard. I would suggest striking this language. ...Typically open water impacts count toward the total impacts of a project, but do not require compensation. Portions of the above are new requirements allowing the VDEQ to ask for compensation [for open water impacts]. ...if a value to open waters was to be assessed, a reasonable starting point would be at the 1:20 ratio or less. Given the low value of open waters, should compensation be required at all.	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. The Department has taken discretion on requiring compensation for open water impacts incurred under individual permits, and no set ratio exists in 9VAC25-210. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less. The Department intended to reduce the potential situations where compensation may be required under either permit type, and potentially allow less than a 1:1 ratio under general permit coverage.

Comments on definitions related to activities in surface waters

All comments pertaining to general permit definitions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.

Virginia Transportation Construction Alliance	Isolated Wetland of Minimal Ecological Value (IWOMEV): [definition] was deleted from the definitions, and should not be as this is an important distinction for smaller isolated wetlands that are not jurisdictional.	The Department does not recommend amending the Proposed regulation texts. This definition was previously repeated in all regulations including 9VAC25-210, and a decision was made to reduce duplication by placing certain definitions applicable to all permit types into 9VAC25-210. The proposed language reached consensus through collaboration with the Citizen Advisory Group.
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Comments on modifications to permits

All comments pertaining to general permit modifications in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section. The Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes every effort to respond in a timely manner.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not list species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species but does recommend an amendment to strike use of the modifier 'proposed' in these Sections, but the Department also suggest that permittee verifies the project will not impact proposed species or habitat. Original language containing 'federally listed' was revised and moved from Section 40 A 3 to Section 40 G 12 and copied to Section 80 B 1 c. The same language appears in Section 50 C and is not proposed for change. In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Comments on notification requirements

All comments pertaining to notification requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Will deq continue to allow VDOT to use SERP, NEPA, or GIS integrator to provide deed restriction location information?	The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Additional information requirements have been placed on projects incurring less than one-tenth impacts - request that this not apply to VDOT projects. Would have to modify monthly spreadsheet to include: proposed project schedule, zip code, detailed location map, GIS shape files of boundaries, project purpose and need, sum of impacts, delineation map. #12 requires alternative analysis whereas we provide a general, not site-specific, statement. #15 requires deed restriction info on a map whereas we currently provide through SERP, NEPA, or GIS integrator documentation under current regulation.	The Department does not recommend revisions to the proposed language that excludes VDOT from the requirements, other than that which is already proposed in 9VAC25-680-50 A 1. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Continue to reference VDOT's joint permit application previously approved for use by deq	The Department does not recommend amending this provision, as the approved forms for use by VDOT are located in the FORMS section of each regulation.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	VDOT requests that a meeting be scheduled with DEQ and VDOT to revisit our existing Memorandum of Understanding and identify additional items that need to be included to allow VDOT to continue in an efficient manner while applying for and receiving DEQ permits.	The Department intends to meet with VDOT regarding the Memorandum of Understanding process to address VDOT concerns.

Comments on permit conditions

All comments pertaining to permit conditions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Need to be able to get an expedited decision from deq when encountering bedrock, or considerable contractor delay claims could occur. Need a commitment from deq to get a timely resolution.	The Department does not recommend amending the provision regarding DEQ response on bedrock encounters. Staff makes every effort to respond in a timely manner but cannot respond during outside of normal business hours unless an environmental emergency situation arises. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns.
Virginia Department of Transportation	Appreciate the changes incorporated regarding topsoil and invasive species	The Department thanks you for your support.
Virginia Department of Transportation	Keep references to use of mitigation bank and in-lieu fee program credits - don't always purchase credits but use them instead from our own multi-project sites. Edit in similar places for ILF credits.	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Virginia Department of Transportation	Proposed increase to inspection frequency is unnecessary and overly burdensome, particularly for projects lasting over 6 months. semi-annual self inspections are sufficient for compliance with general permits.	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease, even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years, which have well over a 6-month time line.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Delete need for photos within 3 days - an estimate of additional impacts and description can be provided but it may take more than 3 days to get photos	The Department does not recommend amending the proposed provision, as this length of time was increased from that which was originally proposed by the Department (24 hours) to allow consideration of weekends and holidays. With today's technology, the Department believes photos can be generated and submitted along with the other information within this time period, including via email.

Miscellaneous comments

All comments pertaining to miscellaneous provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 15. This section duplicates - within the regulation body - a general permit condition requiring a permittee to provide information when requested. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 15 does not provide any authority to make informational requests beyond that which is already afforded the Department.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Transportation Construction Alliance	This requirement is more stringent than in previous version of the VWPs. One main point of concern is in (3) a. the language is requiring operators to report to the DEQ on permits where no construction activities have started - viewed as unnecessary reporting. DEQ should not have a concern over a situation where nothing has been started. (3) a. should be removed from the proposed language. DEQ has been retroactively changing this requirement in all VWPs for the last year. DEQ has requested applicants to willingly change permits issued with the previous VWP language to this new language. This is a cost of doing business item that can protect you and prevent VDEQ from conducting site visit; however, leaves the burden on the permittee. DEQ is requiring new notification requirements twice a year for the life of the permit, where failure to notify will be a violation of the permit, even if no construction has or is planned to commence - a nuance that can become a serious permit violation overtime, especially if a project does not go to construction for several years after the issuance of the permit and DEQ is not notified that construction is not occurring at each report	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease - previously required monthly - even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years.

Commenter	Comment	Agency response
	period.	
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section; however, the Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations. While the Department recognizes the specific concern about small impacts, general permit coverage has not been authorized in tidal waters as a matter of policy. 9VAC25-660 specifically prohibits use of that general permit in nontidal wetlands adjacent to tidal waters. The Department does not recommend amending the prohibition from using general permits in tidal waters.

VWP General Permit Regulation - Summary of Comments and Agency Response - 9VAC25-670

Comments on the Proposed 9VAC25-660 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar’s office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the ‘Changes made since the proposed stage’ section of this form. Several public comments were received about consistency in this regulation, as noted below.

The following amendment was made based on Department staff review of the Proposed regulation:

- The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word ‘united’ to ‘unified’.
- The Department clarified the need for a permittee’s compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit, by adding one sentence to the end of Section 100, Part I A 1.
- The Department deleted a clause that unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage in Section 27 B.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Request deletion of reference to 9VAC25-230 as it does not pertain to terminations	The Department recommends retaining reference to Procedural Rule No. 1, but amending it to match that which was amended in 9VAC25-210 by changing '9VAC25-230-10 et seq.' to '§ 62.1-44.15:02 of the Code of Virginia'.
Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Comments on general permit term and transition

All comments pertaining to general permit term and transition provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. net effect of changes reduces DEQ's current opportunities to assess project compliance and urge completion, and reduce frequency of updating permit requirements.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department believes that the proposed general permit term does not affect the Department’s ability to conduct compliance activities, but may require more careful project planning on the part of permittees.

Commenter	Comment	Agency response
Virginia Department of Transportation	Language drafted during the CAG was removed that would have allowed projects to continue during the transition period between general permits. previous authorizations should be grandfathered. under existing proposal, VDOT and other permittees could be forced to stop work until new authorization granted. concerned that permittee could be found non-compliant while waiting for new authorization.	The Department recommends amending the general permit term to 10 years, rather than the 15 years noted in the Proposed regulations. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. Because the Department is bound by the existing statute and regulation, any general permit coverage action that DEQ has made or will make from 12:00 a.m. on March 11, 2015 through 11:59 p.m. on August 1, 2016 shall not extend authorization beyond 11:59 p.m. on July 31, 2021 – approximately 6 years. Compliance activity conducted by the Department will continue under current procedures until such time that new regulations become effective.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support the 15 year term change and removing the authorization term. However, applicants applying in the late years of the term will have difficulty using a general permit and completing a project under the same terms/conditions. Unduly burdensome requirement - one option may be to include a provision stating reissued gps will be developed at least one year in advance of prior permit's expiration; another option would be to reinstate language allowing terms/conditions to be based on term length and duration of the project so permittee are not forced to choose which permit to apply for.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.
Virginia Transportation Construction Alliance	This paragraph does not allow for permits to be longer than 15 years with the exception of the first year, where each only allows for a the remaining permit term from the year of the permit issuance. Therefore a permit issued in 2030 will only be valid for one year.	The Code of Virginia does not allow a VWP permit term of more than 15 years, regardless of when the permit is issued.

Commenter	Comment	Agency response
Wetland Studies and Solutions and Home Builders Association of Virginia	Development industry supports a specific permit term (certain number of years), duration for general permits. 15 year proposal is good but all expire on same day. Thought previous committee solved problem in 2001 with current structure. Permits expiring all on the same day cause substantial work for everyone. General Attorney opined back then that it was legal, but there is apparently a different opinion now. Confident we can find a legal solution to allow variable expirations. Not a huge issue, but would be relatively easy change to make things better for everybody.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.

Comments on administrative continuance of permits

No comments were received pertaining to general permit administrative continuance in this regulation. The provision for administrative continuance of individual permits (9VAC25-210-65) did not reach consensus during the Citizen Advisory Group process, and the Board directed the Department to highlight this provision in the Proposed public notice and consider adding a timeline on the action. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. The Department's recommendation for amendments to 9VAC25-210 includes replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B. The Department does not recommend a timeline be inserted regarding the amount of days a continuance may last, as this would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. The Department does not recommend any amendments to the language in Section 35 of each general permit regulation.

Comments on application requirements

All comments pertaining to general permit application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.

Commenter	Comment	Agency response
Townes Engineering	<p>The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."</p>	<p>The Department does not recommend revising the thalweg language in Section 60 B 9. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that while upgrading staff's skills may be a necessary cost of doing business, it does not believe there is a need for any specifically-licensed or -degreed individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.</p>
Virginia Department of Transportation	Change 'linear transportation activities' to 'linear transportation projects'	The Department recommends revising 9VAC25-680-60 A 1 to be consistent with the terminology used in this general permit regulation.
Virginia Department of Transportation	Request relief from providing email addresses on applications	The Department continues to recommend maintaining the requirement for email addresses. If this causes VDOT to revise paper forms, electronic forms, and/or database fields, the Department can accept this information as an attachment to an application, or as part of any cover letter or email submitted with an application. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Break out project name and proposed project schedule into separate numbered items, and that proposed project schedule not be required for spreadsheet projects under 50 A 3 b	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again. Regarding the submittal of a project schedule for VDOT spreadsheet projects, the Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Replace 'fourth order subbasin' with 'fourth level or 8-digit hydrologic unit' because NWBD does not have a fourth order subbasin.	The Department does not recommend replacing 'order' with 'level'. The Department recognizes that the National Watershed Boundary Dataset uses the term 'level' instead of 'order'; however, we recommend keeping the same term used in governing Code §62.1-44.15:23.
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.
Virginia Department of Transportation	Break out narrative description and project purpose and need into separate items	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again.
Virginia Department of Transportation	Object to requirement for proposed topographic or bathymetric contours on plan view drawings - don't have this information for most projects	The Department recommends maintaining the text as proposed, as contours are typically used and submitted by the majority of applicants. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of dot's right of way.	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to providing wetland impacts with sum converted to acres - do not provide this information in current applications, only provide sq ft	The Department recommends maintaining the text as proposed, as acreage is the default unit typically used and submitted by the majority of applicants and is the designated unit for regulatory limits and thresholds. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is copied to each general permit regulation from the Proposed 9VAC25-210 to ensure consistent requirements for all VWP permits. There is no intent for the Department to apply the provision differently due to its inclusion in the general permit regulations. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects incurring less than 1/10 acre or 300 linear feet of impacts.
Virginia Department of Transportation	Replace 'wetland delineation confirmation' with comparable language from B 11 d - don't typically have a written confirmation unless project is a consultant-managed compensation site design	The Department recommends maintaining the text as proposed, as the wetland delineation confirmation is typically submitted by the majority of applicants. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Keep 'in accordance with 9VAC25-20' to clearly reference the permit fees	The Department recommends reinserting this citation.
Virginia Department of Transportation	Support this section [assessment of functions] as written	The Department thanks you for your support.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate responses to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	<p>...the proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.</p>	<p>The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.</p>

Comments on compensatory mitigation

All comments pertaining to general permit compensatory mitigation in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	<p>Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis</p>	<p>The Department thanks you for your support.</p>
Dominion Resources Services, Inc.	<p>Support provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.</p>	<p>The Department thanks you for your support.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to new language re compensation for open water - unsure of how we would effectively compensate for open water impacts in karst	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less, regardless of their location on the landscape. The Department intends to reduce the potential situations where compensation may be required, particularly under general permit coverage. The Department will continue to evaluate compensation proposals in accordance to regulation and program policy.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Support changes to the mitigation hierarchy	The Department thanks you for your support.
Virginia Transportation Construction Alliance	[Section 70 C] should be deleted or substituted with the following language which is more appropriate language such as: "The proposed compensatory mitigation consists of compensating at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent wetlands."	The Department does not recommend amending Section 70 C regarding compensation. The suggested language means the same as the existing language.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	This provides the opportunity for VDEQ to require compensation for ponds and other open waters, where this has not been the standard. I would suggest striking this language. ...Typically open water impacts count toward the total impacts of a project, but do not require compensation. Portions of the above are new requirements allowing the VDEQ to ask for compensation [for open water impacts]. ...if a value to open waters was to be assessed, a reasonable starting point would be at the 1:20 ratio or less. Given the low value of open waters, should compensation be required at all.	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. The Department has taken discretion on requiring compensation for open water impacts incurred under individual permits, and no set ratio exists in 9VAC25-210. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less. The Department intended to reduce the potential situations where compensation may be required under either permit type, and potentially allow less than a 1:1 ratio under general permit coverage.

Comments on definitions related to activities in surface waters

All comments pertaining to general permit definitions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	Isolated Wetland of Minimal Ecological Value (IWOMEV): [definition] was deleted from the definitions, and should not be as this is an important distinction for smaller isolated wetlands that are not jurisdictional.	The Department does not recommend amending the Proposed regulation texts. This definition was previously repeated in all regulations including 9VAC25-210, and a decision was made to reduce duplication by placing certain definitions applicable to all permit types into 9VAC25-210. The proposed language reached consensus through collaboration with the Citizen Advisory Group.

Comments on modifications to permits

All comments pertaining to general permit modifications in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section. The Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Commenter	Comment	Agency response
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes shall make every effort to respond in a timely manner.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not list species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species but does recommend an amendment to strike use of the modifier 'proposed' in these Sections, but the Department also suggest that permittee verifies the project will not impact proposed species or habitat. Original language containing 'federally listed' was revised and moved from Section 40 A 3 to Section 40 G 12 and copied to Section 80 B 1 c. The same language appears in Section 50 C and is not proposed for change. In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Comments on notification requirements

All comments pertaining to notification requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Will deq continue to allow VDOT to use SERP, NEPA, or GIS integrator to provide deed restriction location information?	The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Continue to reference VDOT's joint permit application previously approved for use by deq	The Department does not recommend amending this provision, as the approved forms for use by VDOT are located in the FORMS section of each regulation.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	VDOT requests that a meeting be scheduled with DEQ and VDOT to revisit our existing Memorandum of Understanding and identify additional items that need to be included to allow VDOT to continue in an efficient manner while applying for and receiving DEQ permits.	The Department intends to meet with VDOT regarding the Memorandum of Understanding process to address VDOT concerns.

Comments on permit conditions

All comments pertaining to permit conditions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Need to be able to get an expedited decision from deq when encountering bedrock, or considerable contractor delay claims could occur. Need a commitment from deq to get a timely resolution.	The Department does not recommend amending the provision regarding DEQ response on bedrock encounters. Staff makes every effort to respond in a timely manner but cannot respond during outside of normal business hours unless an environmental emergency situation arises. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns.
Virginia Department of Transportation	Appreciate the changes incorporated regarding topsoil and invasive species	The Department thanks you for your support.
Virginia Department of Transportation	Keep references to use of mitigation bank and in-lieu fee program credits - don't always purchase credits but use them instead from our own multi-project sites. Edit in similar places for ILF credits.	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Virginia Department of Transportation	Proposed increase to inspection frequency is unnecessary and overly burdensome, particularly for projects lasting over 6 months. semi-annual self inspections are sufficient for compliance with general permits.	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease, even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years, which have well over a 6-month time line.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Delete need for photos within 3 days - an estimate of additional impacts and description can be provided but it may take more than 3 days to get photos	The Department does not recommend amending the proposed provision, as this length of time was increased from that which was originally proposed by the Department (24 hours) to allow consideration of weekends and holidays. With today's technology, the Department believes photos can be generated and submitted along with the other information within this time period, including via email.

Miscellaneous comments

All comments pertaining to miscellaneous provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 15. This section duplicates - within the regulation body - a general permit condition requiring a permittee to provide information when requested. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 15 does not provide any authority to make informational requests beyond that which is already afforded the Department.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Transportation Construction Alliance	This requirement is more stringent than in previous version of the VWPs. One main point of concern is in (3) a. the language is requiring operators to report to the DEQ on permits where no construction activities have started - viewed as unnecessary reporting. DEQ should not have a concern over a situation where nothing has been started. (3) a. should be removed from the proposed language. DEQ has been retroactively changing this requirement in all VWPs for the last year. DEQ has requested applicants to willingly change permits issued with the previous VWP language to this new language. This is a cost of doing business item that can protect you and prevent VDEQ from conducting site visit; however, leaves the burden on the permittee. DEQ is requiring new notification requirements twice a year for the life of the permit, where failure to notify will be a violation of the permit, even if no construction has or is planned to commence - a nuance that can become a serious permit violation overtime, especially if a project does not go to construction for several years after the issuance of the permit and DEQ is not notified	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease - previously required monthly - even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years.

Commenter	Comment	Agency response
	that construction is not occurring at each report period.	
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section; however, the Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations. While the Department recognizes the specific concern about small impacts, general permit coverage has not been authorized in tidal waters as a matter of policy. 9VAC25-660 specifically prohibits use of that general permit in nontidal wetlands adjacent to tidal waters. The Department does not recommend amending the prohibition from using general permits in tidal waters.

VWP General Permit Regulation - Summary of Comments and Agency Response - 9VAC25-680

Comments on the Proposed 9VAC25-680 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar's office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the 'Changes made since the proposed stage' section of this form. Several public comments were received about consistency in this regulation, as noted below.

The following amendment was made based on Department staff review of the Proposed regulation:

- The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word 'united' to 'unified'.
- The Department clarified the need for a permittee's compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit, by adding one sentence to the end of Section 100, Part I A 1.
- The Department deleted a clause that unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage in Section 27 B.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Request deletion of reference to 9VAC25-230 as it does not pertain to terminations	The Department recommends retaining reference to Procedural Rule No. 1, but amending it to match that which was amended in 9VAC25-210 by changing '9VAC25-230-10 et seq.' to '§ 62.1-44.15:02 of the Code of Virginia'.
Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Comments on general permit term and transition

All comments pertaining to general permit term and transition provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. net effect of changes reduces DEQ's current opportunities to assess project compliance and urge completion, and reduce frequency of updating permit requirements.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department believes that the proposed general permit term does not affect the Department's ability to conduct compliance activities, but may require more careful project planning on the part of permittees.

Commenter	Comment	Agency response
Virginia Department of Transportation	Language drafted during the CAG was removed that would have allowed projects to continue during the transition period between general permits. previous authorizations should be grandfathered. under existing proposal, VDOT and other permittees could be forced to stop work until new authorization granted. concerned that permittee could be found non-compliant while waiting for new authorization.	The Department recommends amending the general permit term to 10 years, rather than the 15 years noted in the Proposed regulations. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. Because the Department is bound by the existing statute and regulation, any general permit coverage action that DEQ has made or will make from 12:00 a.m. on March 11, 2015 through 11:59 p.m. on August 1, 2016 shall not extend authorization beyond 11:59 p.m. on July 31, 2021 – approximately 6 years. Compliance activity conducted by the Department will continue under current procedures until such time that new regulations become effective.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support the 15 year term change and removing the authorization term. However, applicants applying in the late years of the term will have difficulty using a general permit and completing a project under the same terms/conditions. Unduly burdensome requirement - one option may be to include a provision stating reissued gps will be developed at least one year in advance of prior permit's expiration; another option would be to reinstate language allowing terms/conditions to be based on term length and duration of the project so permittee are not forced to choose which permit to apply for.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.
Virginia Transportation Construction Alliance	This paragraph does not allow for permits to be longer than 15 years with the exception of the first year, where each only allows for a the remaining permit term from the year of the permit issuance. Therefore a permit issued in 2030 will only be valid for one year.	The Code of Virginia does not allow a VWP permit term of more than 15 years, regardless of when the permit is issued.

Commenter	Comment	Agency response
Wetland Studies and Solutions and Home Builders Association of Virginia	Development industry supports a specific permit term (certain number of years), duration for general permits. 15 year proposal is good but all expire on same day. Thought previous committee solved problem in 2001 with current structure. Permits expiring all on the same day cause substantial work for everyone. General Attorney opined back then that it was legal, but there is apparently a different opinion now. Confident we can find a legal solution to allow variable expirations. Not a huge issue, but would be relatively easy change to make things better for everybody.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.

Comments on administrative continuance of permits

No comments were received pertaining to general permit administrative continuance in this regulation. The provision for administrative continuance of individual permits (9VAC25-210-65) did not reach consensus during the Citizen Advisory Group process, and the Board directed the Department to highlight this provision in the Proposed public notice and consider adding a timeline on the action. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. The Department's recommendation for amendments to 9VAC25-210 includes replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B. The Department does not recommend a timeline be inserted regarding the amount of days a continuance may last, as this would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. The Department does not recommend any amendments to the language in Section 35 of each general permit regulation.

Comments on application requirements

All comments pertaining to general permit application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.

Commenter	Comment	Agency response
Townes Engineering	<p>The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."</p>	<p>The Department does not recommend revising the thalweg language in Section 60 B 9. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that while upgrading staff's skills may be a necessary cost of doing business, it does not believe there is a need for any specifically-licensed or -degreed individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.</p>
Virginia Department of Transportation	Change 'linear transportation activities' to 'linear transportation projects'	The Department recommends revising 9VAC25-680-60 A 1 to be consistent with the terminology used in this general permit regulation.
Virginia Department of Transportation	Request relief from providing email addresses on applications	The Department continues to recommend maintaining the requirement for email addresses. If this causes VDOT to revise paper forms, electronic forms, and/or database fields, the Department can accept this information as an attachment to an application, or as part of any cover letter or email submitted with an application. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Break out project name and proposed project schedule into separate numbered items, and that proposed project schedule not be required for spreadsheet projects under 50 A 3 b	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again. Regarding the submittal of a project schedule for VDOT spreadsheet projects, the Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Replace 'fourth order subbasin' with 'fourth level or 8-digit hydrologic unit' because NWBD does not have a fourth order subbasin.	The Department does not recommend replacing 'order' with 'level'. The Department recognizes that the National Watershed Boundary Dataset uses the term 'level' instead of 'order'; however, we recommend keeping the same term used in governing Code §62.1-44.15:23.
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.
Virginia Department of Transportation	Break out narrative description and project purpose and need into separate items	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again.
Virginia Department of Transportation	Object to requirement for proposed topographic or bathymetric contours on plan view drawings - don't have this information for most projects	The Department recommends maintaining the text as proposed, as contours are typically used and submitted by the majority of applicants. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of dot's right of way.	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to providing wetland impacts with sum converted to acres - do not provide this information in current applications, only provide sq ft	The Department recommends maintaining the text as proposed, as acreage is the default unit typically used and submitted by the majority of applicants and is the designated unit for regulatory limits and thresholds. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is copied to each general permit regulation from the Proposed 9VAC25-210 to ensure consistent requirements for all VWP permits. There is no intent for the Department to apply the provision differently due to its inclusion in the general permit regulations. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects incurring less than 1/10 acre or 300 linear feet of impacts.
Virginia Department of Transportation	Replace 'wetland delineation confirmation' with comparable language from B 11 d - don't typically have a written confirmation unless project is a consultant-managed compensation site design	The Department recommends maintaining the text as proposed, as the wetland delineation confirmation is typically submitted by the majority of applicants. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Keep 'in accordance with 9VAC25-20' to clearly reference the permit fees	The Department recommends reinserting this citation.
Virginia Department of Transportation	Support this section [assessment of functions] as written	The Department thanks you for your support.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate responses to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.

Committer	Comment	Agency response
Virginia Transportation Construction Alliance	<p>...the proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.</p>	<p>The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.</p>

Comments on compensatory mitigation

All comments pertaining to general permit compensatory mitigation in this regulation and staff responses are listed below.

Committer	Comment	Agency response
Chesapeake Bay Foundation	<p>Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis</p>	<p>The Department thanks you for your support.</p>
Dominion Resources Services, Inc.	<p>Support provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.</p>	<p>The Department thanks you for your support.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to new language re compensation for open water - unsure of how we would effectively compensate for open water impacts in karst	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less, regardless of their location on the landscape. The Department intends to reduce the potential situations where compensation may be required, particularly under general permit coverage. The Department will continue to evaluate compensation proposals in accordance to regulation and program policy.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Support changes to the mitigation hierarchy	The Department thanks you for your support.
Virginia Transportation Construction Alliance	[Section 70 C] should be deleted or substituted with the following language which is more appropriate language such as: "The proposed compensatory mitigation consists of compensating at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent wetlands."	The Department does not recommend amending Section 70 C regarding compensation. The suggested language means the same as the existing language.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Transportation Construction Alliance	This provides the opportunity for VDEQ to require compensation for ponds and other open waters, where this has not been the standard. I would suggest striking this language. ...Typically open water impacts count toward the total impacts of a project, but do not require compensation. Portions of the above are new requirements allowing the VDEQ to ask for compensation [for open water impacts]. ...if a value to open waters was to be assessed, a reasonable starting point would be at the 1:20 ratio or less. Given the low value of open waters, should compensation be required at all.	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. The Department has taken discretion on requiring compensation for open water impacts incurred under individual permits, and no set ratio exists in 9VAC25-210. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less. The Department intended to reduce the potential situations where compensation may be required under either permit type, and potentially allow less than a 1:1 ratio under general permit coverage.

Comments on definitions related to activities in surface waters

All comments pertaining to general permit definitions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Notice of project completion: make wording consistent with 210 by changing 'signed' to 'submitted'	The Department concurs and recommends revising the text for consistency.
Virginia Transportation Construction Alliance	Isolated Wetland of Minimal Ecological Value (IWOMEV): [definition] was deleted from the definitions, and should not be as this is an important distinction for smaller isolated wetlands that are not jurisdictional.	The Department does not recommend amending the Proposed regulation texts. This definition was previously repeated in all regulations including 9VAC25-210, and a decision was made to reduce duplication by placing certain definitions applicable to all permit types into 9VAC25-210. The proposed language reached consensus through collaboration with the Citizen Advisory Group.

Comments on modifications to permits

All comments pertaining to general permit modifications in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section. The Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations.

Commenter	Comment	Agency response
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes shall make every effort to respond in a timely manner.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not list species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species but does recommend an amendment to strike use of the modifier 'proposed' in these Sections, but the Department also suggest that permittee verifies the project will not impact proposed species or habitat. Original language containing 'federally listed' was revised and moved from Section 40 A 3 to Section 40 G 12 and copied to Section 80 B 1 c. The same language appears in Section 50 C and is not proposed for change. In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Comments on notification requirements

All comments pertaining to notification requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Will deq continue to allow VDOT to use SERP, NEPA, or GIS integrator to provide deed restriction location information?	The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia	Additional information requirements have been	The Department does not recommend revisions

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Department of Transportation	placed on projects incurring less than one-tenth impacts - request that this not apply to VDOT projects. Would have to modify monthly spreadsheet to include: proposed project schedule, zip code, detailed location map, GIS shape files of boundaries, project purpose and need, sum of impacts, delineation map. #12 requires alternative analysis whereas we provide a general, not site-specific, statement. #15 requires deed restriction info on a map whereas we currently provide through SERP, NEPA, or GIS integrator documentation under current regulation.	to the proposed language that excludes VDOT from the requirements, other than that which is already proposed in 9VAC25-680-50 A 1. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Continue to reference VDOT's joint permit application previously approved for use by deq	The Department does not recommend amending this provision, as the approved forms for use by VDOT are located in the FORMS section of each regulation.
Virginia Department of Transportation	VDOT requests that a meeting be scheduled with DEQ and VDOT to revisit our existing Memorandum of Understanding and identify additional items that need to be included to allow VDOT to continue in an efficient manner while applying for and receiving DEQ permits.	The Department intends to meet with VDOT regarding the Memorandum of Understanding process to address VDOT concerns.

Comments on permit conditions

All comments pertaining to permit conditions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Need to be able to get an expedited decision from deq when encountering bedrock, or considerable contractor delay claims could occur. Need a commitment from deq to get a timely resolution.	The Department does not recommend amending the provision regarding DEQ response on bedrock encounters. Staff makes every effort to respond in a timely manner but cannot respond during outside of normal business hours unless an environmental emergency situation arises. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns.
Virginia Department of Transportation	Appreciate the changes incorporated regarding topsoil and invasive species	The Department thanks you for your support.
Virginia Department of Transportation	Keep references to use of mitigation bank and in-lieu fee program credits - don't always purchase credits but use them instead from our own multi-project sites. Edit in similar places for ILF credits.	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Proposed increase to inspection frequency is unnecessary and overly burdensome, particularly for projects lasting over 6 months. semi-annual self inspections are sufficient for compliance with general permits.	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease, even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years, which have well over a 6-month time line.
Virginia Department of Transportation	Delete need for photos within 3 days - an estimate of additional impacts and description can be provided but it may take more than 3 days to get photos	The Department does not recommend amending the proposed provision, as this length of time was increased from that which was originally proposed by the Department (24 hours) to allow consideration of weekends and holidays. With today's technology, the Department believes photos can be generated and submitted along with the other information within this time period, including via email.

Miscellaneous comments

All comments pertaining to miscellaneous provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 15. This section duplicates - within the regulation body - a general permit condition requiring a permittee to provide information when requested. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 15 does not provide any authority to make informational requests beyond that which is already afforded the Department.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Transportation Construction Alliance	This requirement is more stringent than in previous version of the VWPs. One main point of concern is in (3) a. the language is requiring operators to report to the DEQ on permits where no construction activities have started - viewed as unnecessary reporting. DEQ should not have a concern over a situation where nothing has been started. (3) a. should be removed from the proposed language. DEQ has been retroactively changing this requirement in all VWPs for the last year. DEQ has requested applicants to willingly	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease - previously required monthly - even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these

Commenter	Comment	Agency response
	<p>change permits issued with the previous VWP language to this new language. This is a cost of doing business item that can protect you and prevent VDEQ from conducting site visit; however, leaves the burden on the permittee. DEQ is requiring new notification requirements twice a year for the life of the permit, where failure to notify will be a violation of the permit, even if no construction has or is planned to commence - a nuance that can become a serious permit violation overtime, especially if a project does not go to construction for several years after the issuance of the permit and DEQ is not notified that construction is not occurring at each report period.</p>	<p>provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years.</p>
<p>Virginia Department of Transportation</p>	<p>Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.</p>	<p>The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section; however, the Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations. While the Department recognizes the specific concern about small impacts, general permit coverage has not been authorized in tidal waters as a matter of policy. 9VAC25-660 specifically prohibits use of that general permit in nontidal wetlands adjacent to tidal waters. The Department does not recommend amending the prohibition from using general permits in tidal waters.</p>

VWP General Permit Regulation - Summary of Comments and Agency Response - 9VAC25-690

Comments on the Proposed 9VAC25-690 regulation have been organized first into the overall type of provisions and then by topic, including those comments in support of the proposed regulation provisions. In some cases, a summary precedes the individual comments received.

Consistency

Many of the recommended amendments to the Proposed regulation were generated from the review of the text by the Virginia Registrar's office, and then the subsequent review by Department staff. The amendments include adding back missing words/phrases; striking words/phrases that were not stricken as the Department intended; inconsistent use of words/phrases; and correcting citations or adding missing citations. All amendments for consistency are noted within the 'Changes made since the proposed stage' section of this form. Several public comments were received about consistency in this regulation, as noted below.

The following amendment was made based on Department staff review of the Proposed regulation:

- The Department added a requirement for average stream width, as this is currently required by regulation and in the Joint Permit Application, but was unintentionally left out of the Proposed regulation. In the same provision, staff revised punctuation and corrected the word 'united' to 'unified'.
- The Department clarified the need for a permittee's compliance with not only the general permit, but the general permit regulation and any requirements applied through coverage under a general permit, by adding one sentence to the end of Section 100, Part I A 1.
- The Department deleted a clause that unintentionally conveyed that a notice of project completion could relieve a permittee from complying with the general permit, general permit regulation, and coverage in Section 27 B.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Request deletion of reference to 9VAC25-230 as it does not pertain to terminations	The Department recommends retaining reference to Procedural Rule No. 1, but amending it to match that which was amended in 9VAC25-210 by changing '9VAC25-230-10 et seq.' to '§ 62.1-44.15:02 of the Code of Virginia'.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

Comments on general permit term and transition

All comments pertaining to general permit term and transition provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chesapeake Bay Foundation	Oppose changes in terms and administrative continuance. net effect of changes reduces DEQ's current opportunities to assess project compliance and urge completion, and reduce frequency of updating permit requirements.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department believes that the proposed general permit term does not affect the Department's ability to conduct compliance activities, but may require more careful project planning on the part of permittees.

Commenter	Comment	Agency response
Virginia Department of Transportation	Language drafted during the CAG was removed that would have allowed projects to continue during the transition period between general permits. previous authorizations should be grandfathered. under existing proposal, VDOT and other permittees could be forced to stop work until new authorization granted. concerned that permittee could be found non-compliant while waiting for new authorization.	The Department recommends amending the general permit term to 10 years, rather than the 15 years noted in the Proposed regulations. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. Because the Department is bound by the existing statute and regulation, any general permit coverage action that DEQ has made or will make from 12:00 a.m. on March 11, 2015 through 11:59 p.m. on August 1, 2016 shall not extend authorization beyond 11:59 p.m. on July 31, 2021 – approximately 6 years. Compliance activity conducted by the Department will continue under current procedures until such time that new regulations become effective.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support the 15 year term change and removing the authorization term. However, applicants applying in the late years of the term will have difficulty using a general permit and completing a project under the same terms/conditions. Unduly burdensome requirement - one option may be to include a provision stating reissued gps will be developed at least one year in advance of prior permit's expiration; another option would be to reinstate language allowing terms/conditions to be based on term length and duration of the project so permittee are not forced to choose which permit to apply for.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.
Virginia Transportation Construction Alliance	This paragraph does not allow for permits to be longer than 15 years with the exception of the first year, where each only allows for a the remaining permit term from the year of the permit issuance. Therefore a permit issued in 2030 will only be valid for one year.	The Code of Virginia does not allow a VWP permit term of more than 15 years, regardless of when the permit is issued.

Commenter	Comment	Agency response
Wetland Studies and Solutions and Home Builders Association of Virginia	Development industry supports a specific permit term (certain number of years), duration for general permits. 15 year proposal is good but all expire on same day. Thought previous committee solved problem in 2001 with current structure. Permits expiring all on the same day cause substantial work for everyone. General Attorney opined back then that it was legal, but there is apparently a different opinion now. Confident we can find a legal solution to allow variable expirations. Not a huge issue, but would be relatively easy change to make things better for everybody.	The Department recommends amending the general permit term to 10 years, rather than 15 years. The Department does not recommend amending the transition provisions. This was a non-consensus issue at the end of the Citizen Advisory Group process, as noted at the March 2015 State Water Control Board meeting. VWP individual permits are available for those projects where there is a higher risk of not completing in the allotted, remaining time. However, while the Department is bound by the existing statute and regulation, we recognize the need to continue discussion with stakeholders about the manner in which general permits expire and transition into a newly issued or reissued general permit.

Comments on administrative continuance of permits

No comments were received pertaining to general permit administrative continuance in this regulation. The provision for administrative continuance of individual permits (9VAC25-210-65) did not reach consensus during the Citizen Advisory Group process, and the Board directed the Department to highlight this provision in the Proposed public notice and consider adding a timeline on the action. Two commenters support the provisions in general and one opposed the provision, but none suggested a timeline. The Department's recommendation for amendments to 9VAC25-210 includes replacing 'may' with 'shall' and adding a clarifying statement that was inadvertently left out to complete the first sentence of subsection B. The Department does not recommend a timeline be inserted regarding the amount of days a continuance may last, as this would be inconsistent with other DEQ water program regulations and possibly a contradiction to the requirements of the Administrative Process Act. The Department does not recommend any amendments to the language in Section 35 of each general permit regulation.

Comments on application requirements

All comments pertaining to general permit application requirements in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	New rule would require functional assessment only where applicant proposes permittee-responsible mitigation. DEQ justifies the change through the use of standard mitigation ratios, but these plainly will not take into account myriad site-specific conditions that determine wetland functions...tools cannot reasonably be said to be consistent with statutory command to ensure not loss of wetlands functions. Oppose this change.	The Department does not recommend revising this provision because the provision as proposed continues to meet the statutory obligation of no net loss of existing wetland acreage and function and continues to be managed in accordance with program guidance for standard mitigation ratios. While the program is moving toward the use of better tools to assess compensatory mitigation needs and inform compensatory mitigation decisions, the methods historically used for functional analysis are still valid, albeit not particularly informative. The provision as currently proposed is a compromise between eliminating the requirement altogether and reducing the circumstances under which such analysis is required to those situations where ambiguity is most often encountered, such as in on-the-ground compensation projects.

Commenter	Comment	Agency response
Townes Engineering	<p>The proposed language puts many highly qualified survey groups at a disadvantage. ...In low flow conditions, [thalweg] can be easily identified, however, during periods of high flow, its location can be challenging. Most field survey groups are not familiar with this term, much less how to correctly identify [it]. Standard engineering convention for site plans only requires that the centerline of the associated stream channel be identified and depicted on plans and profiles. ...will adversely affect the time and budget of projects involving road crossings, bridges, trail crossings, and stormwater management. ...will also force survey firms to hire a stream scientist to be onsite to ensure that the thalweg is correctly identified in the field. ...the language...should be revised to state: "Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed centerline, or shall provide spot elevations of the stream centerline at the beginning and end of the pipe or culvert extending to a minimum of 10 feet beyond the limits of the proposed impact."</p>	<p>The Department does not recommend revising the thalweg language in Section 60 B 9. The Department finds that the majority of firms working in the environmental field are experienced in creating longitudinal profiles that often identify the thalweg of a stream, particularly when proposing a stream restoration project. The Department acknowledges that while upgrading staff's skills may be a necessary cost of doing business, it does not believe there is a need for any specifically-licensed or -degreed individual in order to determine the thalweg. Several resources exist on-line to assist with educating staff in conducting longitudinal profiles, including the thalweg, such as but not limited to manuals, training programs, and internet tools created by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service.</p>
Virginia Department of Transportation	Change 'linear transportation activities' to 'linear transportation projects'	The Department recommends revising 9VAC25-680-60 A 1 to be consistent with the terminology used in this general permit regulation.
Virginia Department of Transportation	Request relief from providing email addresses on applications	The Department continues to recommend maintaining the requirement for email addresses. If this causes VDOT to revise paper forms, electronic forms, and/or database fields, the Department can accept this information as an attachment to an application, or as part of any cover letter or email submitted with an application. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Break out project name and proposed project schedule into separate numbered items, and that proposed project schedule not be required for spreadsheet projects under 50 A 3 b	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again. Regarding the submittal of a project schedule for VDOT spreadsheet projects, the Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Replace 'fourth order subbasin' with 'fourth level or 8-digit hydrologic unit' because NWBD does not have a fourth order subbasin.	The Department does not recommend replacing 'order' with 'level'. The Department recognizes that the National Watershed Boundary Dataset uses the term 'level' instead of 'order'; however, we recommend keeping the same term used in governing Code §62.1-44.15:23.
Virginia Department of Transportation	Object to requirement for GIS-compatible shape files and recommends these be provided if available	The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.
Virginia Department of Transportation	Break out narrative description and project purpose and need into separate items	The Department recommends maintaining the text as proposed, as the requirements are clearly stated as shown. Dividing these informational items in this way will require renumbering the section again.
Virginia Department of Transportation	Object to requirement for proposed topographic or bathymetric contours on plan view drawings - don't have this information for most projects	The Department recommends maintaining the text as proposed, as contours are typically used and submitted by the majority of applicants. This language proposed and agreed to through collaboration with the Citizen Advisory Group to ensure consistent requirements for all VWP permits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Object to requirement to provide thalweg - we do not have this information for most projects and may extend off of dot's right of way.	The Department does not recommend revising the thalweg language in Section 60 B 9. The Department would not expect VDOT to provide this information beyond the project limits. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to providing wetland impacts with sum converted to acres - do not provide this information in current applications, only provide sq ft	The Department recommends maintaining the text as proposed, as acreage is the default unit typically used and submitted by the majority of applicants and is the designated unit for regulatory limits and thresholds. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Delete reference to least environmentally damaging practicable alternative. Concerned deq will now make its own LEDPA decision when they are not a NEPA authority. No statutory authority for the SWCB to make LEDPA decisions.	The Department does not recommend deleting the reference to the 'least environmentally damaging practicable alternative'. This language is copied to each general permit regulation from the Proposed 9VAC25-210 to ensure consistent requirements for all VWP permits. There is no intent for the Department to apply the provision differently due to its inclusion in the general permit regulations. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects incurring less than 1/10 acre or 300 linear feet of impacts.
Virginia Department of Transportation	Replace 'wetland delineation confirmation' with comparable language from B 11 d - don't typically have a written confirmation unless project is a consultant-managed compensation site design	The Department recommends maintaining the text as proposed, as the wetland delineation confirmation is typically submitted by the majority of applicants. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address said requirement for projects where VDOT is the applicant/permittee.
Virginia Department of Transportation	Keep 'in accordance with 9VAC25-20' to clearly reference the permit fees	The Department recommends reinserting this citation.
Virginia Department of Transportation	Support this section [assessment of functions] as written	The Department thanks you for your support.
Virginia Transportation Construction Alliance	If a new application fee is being required then should it not be 180 days versus the shorter period of 60 days. As we saw through the recession, many projects were put on hold in the middle of a project, and it took time for project to be re-initiated as companies re-organized, determined the need for a project etc., or needed the additional time to develop an adequate responses to satisfy the comment posed by VDEQ.	The Department does not recommend revising the amount of days after which an incomplete application can be withdrawn. The Department experiences extensive delays in responses at times when the project applicants have not completed enough design or obtained the necessary funding to actually complete a project, thus requiring staff to 'track' lingering projects beyond that which is reasonable. This change was discussed through the Citizen Advisory Group and identified as an acceptable time period.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	<p>...the proposed regulation will have a broader effect on the regulated community, in the form of the cost of the GIS software (\$3,500 to 11,000 per single license and \$5,000 to \$40,000 for a server license, where functionality is limited at the lower cost levels), the cost of new hardware to run the software as it has different requirements from the standard AutoCAD software that most firms operate, as well as the many man-hours needed to become proficient with the GIS software. Most firms work in AutoCAD, which is more proficient with engineering for a given project and providing construction plans. The estimation of cost has been greatly underestimated by the Commonwealth of Virginia. ...Without the specificity, the VDEQ would not be able to use the data in the manner in which they intend, and this may be an obstacle to deeming a permit application complete.</p>	<p>The Department recommends replacing the GIS shapefile with a map for the required information by combining portions of 9VAC25-6x0-60 B 6 e and f, and striking the GIS language in 6x0-60 B 6 f and 11 e, based on public comment and the assessment of economic impacts.</p>

Comments on compensatory mitigation

All comments pertaining to general permit compensatory mitigation in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Chesapeake Bay Foundation	<p>Support amendments regarding compensatory mitigation hierarchy with evaluation on case-by-case basis</p>	<p>The Department thanks you for your support.</p>
Dominion Resources Services, Inc.	<p>Support provisions: exempting some open water impacts from permitting and compensation requirements; allowing administrative continuances; requiring functional assessment only for certain projects with non-standard mitigation ratios.</p>	<p>The Department thanks you for your support.</p>

Commenter	Comment	Agency response
Virginia Department of Transportation	Object to new language re compensation for open water - unsure of how we would effectively compensate for open water impacts in karst	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less, regardless of their location on the landscape. The Department intends to reduce the potential situations where compensation may be required, particularly under general permit coverage. The Department will continue to evaluate compensation proposals in accordance to regulation and program policy.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes made to mitigation hierarchy	The Department thanks you for your support.
Virginia Manufacturers Association c/o Troutman Sanders LLP	Support changes that allow deq discretion on need for open water compensation	The Department thanks you for your support.
Virginia Mitigation Banking Association c/o Troutman Sanders LLP	Support changes to the mitigation hierarchy	The Department thanks you for your support.
Virginia Transportation Construction Alliance	[Section 70 C] should be deleted or substituted with the following language which is more appropriate language such as: "The proposed compensatory mitigation consists of compensating at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent wetlands."	The Department does not recommend amending Section 70 C regarding compensation. The suggested language means the same as the existing language.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	This provides the opportunity for VDEQ to require compensation for ponds and other open waters, where this has not been the standard. I would suggest striking this language. ...Typically open water impacts count toward the total impacts of a project, but do not require compensation. Portions of the above are new requirements allowing the VDEQ to ask for compensation [for open water impacts]. ...if a value to open waters was to be assessed, a reasonable starting point would be at the 1:20 ratio or less. Given the low value of open waters, should compensation be required at all.	The Department recommends revising the provision for clarification that open water compensation may be required in certain circumstances. The Department has taken discretion on requiring compensation for open water impacts incurred under individual permits, and no set ratio exists in 9VAC25-210. Compensation for open water impacts may be required under general permit coverage at a 1:1 ratio or less. The Department intended to reduce the potential situations where compensation may be required under either permit type, and potentially allow less than a 1:1 ratio under general permit coverage.

Comments on definitions related to activities in surface waters

All comments pertaining to general permit definitions in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Transportation Construction Alliance	Isolated Wetland of Minimal Ecological Value (IWOMEV): [definition] was deleted from the definitions, and should not be as this is an important distinction for smaller isolated wetlands that are not jurisdictional.	The Department does not recommend amending the Proposed regulation texts. This definition was previously repeated in all regulations including 9VAC25-210, and a decision was made to reduce duplication by placing certain definitions applicable to all permit types into 9VAC25-210. The proposed language reached consensus through collaboration with the Citizen Advisory Group.

Comments on modifications to permits

All comments pertaining to general permit modifications in this regulation and staff responses are listed below.

Commenter	Comment	Agency response
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section. The Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Review time should be 5 days instead of 10 - could result in significant cost and scheduling delays	The Department does not recommend revising the amount of days provided to staff for responding to notice of additional temporary impacts. Ten days represents a compromise between five and 15 days, both suggestions made by participants of the Citizens Advisory Group. This length of time allows for the consideration of weekends and state holidays, as well as potential coordination inside and outside of the Department. Staff makes shall make every effort to respond in a timely manner.
Virginia Transportation Construction Alliance	Proposed threatened or endangered species are not list species under the Endangered Species Act, thus are not afforded the same protections as listed threatened or endangered species - reference to proposed should be removed, as well as reference to federal species as the Commonwealth of Virginia does not have jurisdiction over federal T&E species, and this has to be handled through U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. These two items are listed in order of importance.	The Department does not recommend deleting 'federally listed' in relation to threatened or endangered species but does recommend an amendment to strike use of the modifier 'proposed' in these Sections, but the Department also suggest that permittee verifies the project will not impact proposed species or habitat. Original language containing 'federally listed' was revised and moved from Section 40 A 3 to Section 40 G 12 and copied to Section 80 B 1 c. The same language appears in Section 50 C and is not proposed for change. In accordance with 9VAC25-210-50 B 2, no VWP permit shall be issued where terms and conditions of such permit do not comply with state law, including Chapter 5 of Title 29.1, which authorizes Virginia to adopt the federal list, as well as modifications and amendments thereto, and to declare by regulation that species <i>not appearing</i> on the federal lists are endangered or threatened species in Virginia.

Comments on notification requirements

All comments pertaining to notification requirements in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Will deq continue to allow VDOT to use SERP, NEPA, or GIS integrator to provide deed restriction location information?	The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns with providing this information on VDOT projects.
Virginia Department of Transportation	Continue to reference VDOT's joint permit application previously approved for use by deq	The Department does not recommend amending this provision, as the approved forms for use by VDOT are located in the FORMS section of each regulation.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	VDOT requests that a meeting be scheduled with DEQ and VDOT to revisit our existing Memorandum of Understanding and identify additional items that need to be included to allow VDOT to continue in an efficient manner while applying for and receiving DEQ permits.	The Department intends to meet with VDOT regarding the Memorandum of Understanding process to address VDOT concerns.

Comments on permit conditions

All comments pertaining to permit conditions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Need to be able to get an expedited decision from deq when encountering bedrock, or considerable contractor delay claims could occur. Need a commitment from deq to get a timely resolution.	The Department does not recommend amending the provision regarding DEQ response on bedrock encounters. Staff makes every effort to respond in a timely manner but cannot respond during outside of normal business hours unless an environmental emergency situation arises. The Department will continue to coordinate with VDOT through the Memorandum of Understanding process to address concerns.
Virginia Department of Transportation	Appreciate the changes incorporated regarding topsoil and invasive species	The Department thanks you for your support.
Virginia Department of Transportation	Keep references to use of mitigation bank and in-lieu fee program credits - don't always purchase credits but use them instead from our own multi-project sites. Edit in similar places for ILF credits.	The Department does not recommend reinserting language recognizing multi-project compensation sites as this option for providing compensatory mitigation is extremely unlikely to be approved after implementation of the 2008 Federal Mitigation Rule. Thus, the associated language was removed from the regulation to reduce confusion as to the acceptable compensatory mitigation options available to VWP permittees. The Department does not intend to require VDOT or any private entity to revise and update existing multi-project compensation plans or instruments to meet the current Rule standards, as these sites are few in number and in some cases are close to being exhausted.
Virginia Department of Transportation	Proposed increase to inspection frequency is unnecessary and overly burdensome, particularly for projects lasting over 6 months. semi-annual self inspections are sufficient for compliance with general permits.	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease, even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years, which have well over a 6-month time line.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Delete need for photos within 3 days - an estimate of additional impacts and description can be provided but it may take more than 3 days to get photos	The Department does not recommend amending the proposed provision, as this length of time was increased from that which was originally proposed by the Department (24 hours) to allow consideration of weekends and holidays. With today's technology, the Department believes photos can be generated and submitted along with the other information within this time period, including via email.

Miscellaneous comments

All comments pertaining to miscellaneous provisions in this regulation and staff responses are listed below.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Department of Transportation	Object to inclusion of new language that seems to give DEQ ability to request information on a case-by-case basis beyond what is required for a complete application. DEQ could use this section to deem application incomplete and keep review clock from starting.	The Department does not recommend deleting Section 15. This section duplicates - within the regulation body - a general permit condition requiring a permittee to provide information when requested. Similar language is used in multiple other Department regulations and is reflective of authority provided in the Code of Virginia. The stand-alone Section 15 does not provide any authority to make informational requests beyond that which is already afforded the Department.
Virginia Department of Transportation	Add 'for a single and complete project' as it relates to total permanent and temporary impacts for clarity	The Department recommends amending this provision for consistency with Section 30 A.
Virginia Transportation Construction Alliance	This requirement is more stringent than in previous version of the VWPs. One main point of concern is in (3) a. the language is requiring operators to report to the DEQ on permits where no construction activities have started - viewed as unnecessary reporting. DEQ should not have a concern over a situation where nothing has been started. (3) a. should be removed from the proposed language. DEQ has been retroactively changing this requirement in all VWPs for the last year. DEQ has requested applicants to willingly change permits issued with the previous VWP language to this new language. This is a cost of doing business item that can protect you and prevent VDEQ from conducting site visit; however, leaves the burden on the permittee. DEQ is requiring new notification requirements twice a year for the life of the permit, where failure to notify will be a violation of the permit, even if no construction has or is planned to commence - a nuance that can become a serious permit violation overtime, especially if a project does not go to construction for several years after the issuance of the permit and DEQ is not notified	The Department does not recommend amending the provisions related to compliance monitoring. The Department believes that the frequency of inspections required of permittees may actually decrease - previously required monthly - even with reporting the status of areas not currently under construction. The Department understands that these provisions may actually benefit permittees more than it may benefit those serving as advisors or consultants to permittees; however, these provisions are consistent with what has been required of permittees holding VWP individual permits over the last one to two years.

Commenter	Comment	Agency response
	that construction is not occurring at each report period.	
Virginia Department of Transportation	Prefer use of wording 'affect' and 'result in taking' instead. Request that deq consider relaxing prohibition of using general permits for projects with minor impacts to cypress/tupelo swamps - could affect some projects in Hampton Roads area.	The Department does not recommend amending 'impact' in this provision, as this is the original language that was moved from a different location in the same section; however, the Department does recommend amending 'be the taking' to 'result in a taking' for consistency among regulations. While the Department recognizes the specific concern about small impacts, general permit coverage has not been authorized in tidal waters as a matter of policy. 9VAC25-660 specifically prohibits use of that general permit in nontidal wetlands adjacent to tidal waters. The Department does not recommend amending the prohibition from using general permits in tidal waters.